CHILD IN NEED OF AID MANUAL



A Brief Overview of the CINA/ICWA Process for Legislators and Legislative Aides

This manual is the work product of the *Child in Need of Aid Workshop* held November 7, 2003 in the Governor's Conference Room at Fairbanks. The workshop was teleconferenced to Anchorage and Juneau legislative where legislative aides heard the presentations.

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Table of Contents

Representative Wilson's Introduction				
Representative Coghill's Introduction				
Judicial Process of CINA-Judge Niesje Steinkruger	3			
CINA & ICWA Process-Rayna Hamm	27			
Attorney General's Office-Dianne Olsen	37			
Public Defender's Office-Paul Carnasky	41			
Office of Public Advocacy-John Franich	45			
Mediation in CINA Cases-Jane Parrish	49			
Anchorage Family Care Court-Muriel Kronowitz	53			
Tribal Involvement with ICWA-Ethan Schutt				
General Questions & Answers	57			
Final Comments: Judge Steinkruger Representative Coghill	59 61			
Judge Steinkruger's Charts:				
Frontloading Services Words in CINA Cases Tribal Intervention Emergency Custody Temporary Custody After Temporary Custody Court Rule of Temporary Custody Meeting of the Parties Adjudication & Disposition Permanency Hearing Review Procedures	5 6 8 11 12 13 14 18 19 20 22			
Rayna Hamm's Charts:				
Adoptive Preferences Foster Care & Pre-adoptive				

Appendix:

Alaska Supreme Court CINA Cases Scheduled	65
Alaska Supreme Court Case Law	65
Other Case Law	72
Disclosure of Agency Records Release Form	73
CINA Legislation Pending in 24 th Legislature	75
Office of Children's Services Contacts	79
Judge Steinkruger's Timeline Chart	81

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REPRESENTATIVE PEGGY WILSON



February 2, 2005

As Chairman of the House Health, Education, and Social Services Committee, I recognized the tremendous responsibility that all legislators have to preserve and protect Alaskan families while making sure our children are protected from abuse.

That a legislator may become involved in Child in Need of Aid (CINA) and the Indian Child Welfare Act (ICWA) cases are protected by law. Indeed there are times that the only direction parents have to look for answers and find due process is their legislator.

There are many components to CINA cases: the attorney general's office, the public defender, Office of Public Advocacy, the Office of Children's Services; as well, guardians ad litem, mediators, tribal attorneys, tribal courts, therapeutic courts, caseworkers, and in many cases, legislators may be involved. Knowing how to work with all interested parties is very important to legislators and their staff. Dealing with CINA cases is very intricate, and I appreciate the opportunity we all had to participate in the CINA Workshop held in 2003. This handbook is the result of that workshop.

Please consider this manual a tool to use in helping to understand the processes and entities involved, and knowing how best to help our constituents with CINA.

Representative Peggy Wilson

Reggy Wilson

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REPRESENTATIVE JOHN COGHILL



February 2, 2005

Greetings:

With great honor, I present this transcript of the Child In Need of Aid (CINA) Workshop held in November of 2003. One might ask why a year after the fact I provide the transcripts. I am serving my seventh session in the legislature, and I can tell you some of the most difficult issues to deal with are constituents calling and having issues with either the court system or the child protection services or some state agency that is somehow involved in that.

When I looked around the room and all around Alaska during the workshop, there were people who were very involved with the CINA issue. How do we help our people in Alaska? How do we help keep children safe? How do we keep families together? How do we do it smoothly? How do we do it according to the law that has now become the policy of Alaska? How do we do it in the court systems? How do we do it in the administrative systems? As legislators, many times we come into it very new and not knowing what the system is or who to talk to and sometimes it can be very frustrating. I am very fortunate that I have a staff member who has a good grasp of the systems. On my own I felt like I boarded an airplane that was flying through the clouds without a GPS or an ADF or anything and I really felt frustrated. I did not know who was who, or what was what, and when people called me I could just give them a blank stare and say "lets go find out."

The purpose of the workshop was primarily to get names and faces together, and to let legislators and their staffs know what the system is. I asked Judge Steinkruger, Presiding Officer in the Fourth Judicial District and other people in the system to come share their expertise with legislators and their staff. The quality of that information was so profound that I feel a need to share it with those who did not attend the workshop but have to deal with the issues discussed.

Sincerely,

Representative John Coghill

In Ciphill

Judge Steinkruger, Presiding Judge, 4th Judicial District



My name is Niesje Steinkruger. I have been on the bench for 18 years in Alaska, I have been practicing for almost 26. Alaska is my home and, as many of you know *Child In Need of Aid* (CINA) cases are near and dear to my heart. It is important to me how we handle them.

I distributed information this morning here in Fairbanks about the court's <u>Family Law Self-help Center</u>, but I want to put in a plug for it to people attending by videoconference in Anchorage and Juneau.

We are trying to reach as many people as we can and let them know that even for an old person like me, this is a user-friendly site. While we are not doing CINA cases on the site, there are things on there that will help families involved in CINA cases and custody cases, because many times the CINA cases and the custody cases between parents and other family members overlap and become complicated. So getting this website information out to Alaskans is very, very important. There are free terminals at many of the courts that people can use if they don't have a computer at home.

This morning I am going to start off with the judicial process of a CINA case, then we will hear from Rayna Hamm from the Office of Children's Services (OCS)¹, who is going to talk about social work and case management. Dianne Olsen is with us to talk about the role of the Attorney General's Office. Paul Carnasky is here and will talk about the role of the Public Defender Agency. Josh Fink and John Franich will talk about the independent role of the Office of Public Advocacy (OPA) in these cases. Jane Parrish is with us to talk about mediation in CINA cases. We also have Muriel Kronowitz from Anchorage to talk about the Family Care Court (FCC) and Ethan Schutt is here from the Tanana Chiefs to talk about how they interact with all of us.

I would certainly think that Alaska is unusual. We are one of the few states in the country that has integrated the Indian Child Welfare Act (ICWA) and the Alaska Statutes directly into the court rules. So, although you may have to go to three places to look at them, if you start with the court rules you are going to find that they track the statutes and they track ICWA. Court rules serve as a very good guide, because we have separate rules just for CINA cases.

I am going to talk this morning about the judicial process. My charts are going to be an effort to walk you through and show you how the pieces fit together. It is impossible to memorize all this. My goal is that you will see when someone comes to see you or asks you a question, that they are probably asking about a particular piece, a slice out of a big pie, and you can go back and see where that fits in.

¹ Division of Family & Youth Services (DFYS) was changed to the Office of Children's Services on July 1, 2003 as part of the reorganization of the Department of Health & Social Services by the Murkowski Administration. Additionally, prior to 2003 DFYS was supervised at the director level. The Murkowski Administration restructured the Department and OCS is supervised by a deputy director.

There are some minor differences around Alaska between how we do cases in Anchorage or Juneau or Fairbanks. They are simply local practice procedural differences; they have virtually nothing to do with what the law is or how it is applied. It is just what works best in each community.

Many of us feel that CINA cases are the most important cases the court system deals with. CINA cases involve the most complex issues and they have the most to do with Alaskans and Alaska's future. These are the kids sitting next to your kids in the classroom. These are the kids who may end up in our jails. These are the kids who are victims. These are the kids who need help and medical services and those issues will continue and not stop when they are 18 if we don't intervene and help. So we are very interested in working with this group of kids.

I am going to start this morning with what we call <u>front loading services</u>². I believe this is the key. The law has changed in Alaska and everywhere in the United States; there are timetables now. When I first started practicing law, children were in foster care sometimes from birth until the time they turned 18. We have made tremendous progress in this State in not having children spend a lifetime in foster care. I think it is important that we look at this to see how far we have come. The timelines that I have put up, I will be coming back to and talking about, because the key to them is front loading services. People are in need of the services and the services are provided in the beginning, not at the end.

The basic timelines are temporary custody, a hearing must be held in 48 hours; the adjudication and disposition hearing, within 4 months; the permanency hearing within 12 months; petition to terminate or not terminate within 15 months; and, after a child has been in foster care, trial on a termination petition at 21 months. Those vary a little from case to case but that is the basic timeline.

I am going to be using some words that you will hear when you are talking to people in the legal profession about CINA cases.

PARTY: A party in these cases is any one of the participants sitting around the tables in the courtroom. It is always the Office of Children's Service (OCS); the guardian ad litem; the office that represents the best interest of the child, usually the Office of Public Advocacy (OPA); mom and her attorney; and dad and his attorney times the number of dads. Many times we have one, two, or three dads in the cases. Also, in ICWA cases, we may have an attorney from the child's tribe. In our jurisdiction we frequently have counsel from the Tanana Chiefs Conference (TCC) and there may be an Indian custodian. An Indian custodian is sometimes grandma or aunty; a person who is related to the family and has been caring for the child.

INTERVENE: Intervene means to go in or to join in. Under the Indian Child Welfare Act (ICWA)³ the tribe and the Indian custodian⁴ can file a motion with the court asking to intervene.

⁴ Refer to the Words Chart on page 6.

² Refer to Front Loading Services Chart on page 5.

³ Congress enacted the Indian Child Welfare Act in November of 1978 declaring that they had a responsibility to protect the "best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs"

The judge decides if they can intervene; the answer to that question ninety-nine percent of the time is yes.

STIPULATION: This is a word we use every day. It means to agree - we stipulate. You will hear people come to court with their clients and say "we'll stipulate". It means that we agree, almost always in writing or in the court on the record. For example, we stipulate to temporary custody; we agree the state can have temporary custody.

ADJUDICATION: This is big word for a decision, a ruling, to settle on something, to decide it on the merit. In the case of CINA cases it means we adjudicate the child in need of aid. The judge decides this child – something related to this child – makes them a "child in need of aid".

FRONT LOADING SERVICES IS THE KEY

Legal Timetables

48 Hr. **Temporary Custody**

Adjudication/Disposition 4 Mo.

12 mo. Permanency Hearing

Termination Petition Filed 15 mo.

Termination Trial 21 mg.

Too not for most infants, toddlers, preschoolers, grade school Short?

Services Available Front End

no, not from a child's perspective

Support to Parents

3 Commitment by Parents Yes, "compelling reasons"

Safety Valve?

Words

CINA Cases

1 Parties

- 1. DFYS/OCS/AGO
- 2. GAL/OPA
- 3. Mom/Attorney

- 4. Dad/Attorney (1 or more)
- 5. Tribe/Attorney
- 6. Indian Custodian

(2) Intervene

to go in, to join in





Stipulation

agree - "I'll stipulate" - usually in writing, in court, ex: "stipulate temp. custody"

Adjudication

a decision, a ruling on, to settle finally on the merits. stipulate decision

5 Disposition

the act of disposing of, to put in place, to order, to arrange finally

Permanency

final, lasting, stable, enduring w/o marked change

DISPOSITION: The act of disposing of, of putting in place, of ordering, of arranging the final outcome. Sometimes, in a criminal case, we say the sentence is the disposition. In a CINA case, the disposition is what happens to the child. They go back home with the parents, or to foster care, or guardianship; those are dispositions.

PERMANENCY: This is the final, lasting, stable plan for the child. This is the biggest change to come about in child protection cases – the drive to permanency for children.

TRIBAL INTERVENTION: Tribal intervention comes under the Indian Child Welfare Act (ICWA). The chart on page 6 shows you that the critical words are Indian Child and Indian Child's Tribe. An Indian child is a member of an Indian tribe, which usually means that the tribal council has put this child on the rolls or there has been resolution that this child is a member of the tribe. Frequently, however, we use an alternative in Alaska because the children are so young and the tribe has not yet made the child a member of the tribe. If the child is eligible for membership and the biological child of a member, the tribe can intervene. A child from a village whose mother is a member of the tribe is eligible for membership. The tribal council needs to establish that by a resolution or tell us in some way so we know. In most instances it only takes one parent who is a member of a tribe, to bring the child within the ICWA.

Obviously in Alaska we have instances where a child can be a member of more than one tribe, mom's tribe and dad's tribe. When that happens the court has to figure out which tribe has the most significant contacts. We may have a dispute and the judge has to have a hearing and decide. Thanks to the Tanana Chiefs Conference and the cooperation of the Interior tribes, we have been very successful in our jurisdiction. When there are two tribes, we find that the tribal councils tend to get together and defer to giving priority to one. So we have not had a lot of litigation in this area, because people have been very helpful in working it out.

EMERGENCY CUSTODY: This is where we start. The cases you see most often are when a social worker goes and takes custody of the child; the job I never want.

This is where the social worker goes out, he or she is alone and has to make a difficult decision to remove the children from their home. This is allowed under the Alaska Statutes. The caseworker can do it with a court order, particularly if they think it is a dangerous situation or there are going to be some difficulties, but more often it is without a court order.

The basis for emergency custody just briefly are abandonment, this is the one where we find the child wandering on the Richardson Highway at two o'clock in the morning. Or where we get a call and there is a baby crying in an apartment and there is no one else in there. Also, in neglect cases, physical harm cases, or where the child or a sibling has been sexually abused immediate removal is necessary.

Tribal Intervention

- 1 \$1911 (c)— in state court proceeding for foster care placement or termination of parental rights to an Indian

 Child...Indian Child's Tribe has right to intervene
- 2 \$1903 (4) a decision, a ruling on, to settle finally on the merits. ex: stipulate or decision
- 3 S1903 (5) Indian Child's Tribe
- (a) the Indian Tribe which <a href="https://en.style.com/
- (b) if member or eligible for membership in more than one tribe the Indian Tribe with which the child has most significant contacts.

When that happens the Department must immediately notify the parent(s) that they have taken the child. They must file a petition with the court within 24 hours. A court hearing must be set up within 48 hours, which requires some real juggling on our part and the attorneys. The biggest improvement that has been made in recent years, I think, is that at this stage an attorney is appointed for the parent⁵. When the parents come in to the 48-hour hearing they are not sitting there all by themselves. They may still be very confused and have a lot of difficulties with what is going on and of understanding where they are, but they are not sitting there by themselves.

So those appointments are made and the 48-hour hearing is held. The lawyers that are in the courtroom receive a call that they have been appointed and that they have to be in court the same day or the next day usually for the hearing. The guardian ad litem is also appointed at that point.

At this temporary custody hearing a number of things can happen⁶:

- (1) The parent(s) can ask for a continuance and say this is all happening too fast. The parent(s) might want to have an opportunity to get some more information, so the court sets the case down a few days or a few weeks.
- (2) The parent(s) can stipulate. That means the parent agrees the circumstances are such that "I need to get things together in my life and I am going to agree that the child can be in temporary custody for a period of time". The important part being the parent can always ask for a review of that temporary custody.
- (3) A hearing takes place, which is a regular court hearing where the State calls witnesses and the State establishes by probable cause that the child has been abandoned. This may be because the parents were incarcerated without adequate care for the child; because of substance abuse or mental illness the parent can't provide adequate care. Or there has been physical abuse, sexual abuse, neglect, or domestic violence. All of those kinds of issues we listen to during the hearing. At this stage we are not at a full-scale trial. The level of proof is probable cause; a reasonable person could think this happened. It is not beyond a reasonable

Before the passage of HB 259 a person did not qualify for assistance from the public defender's office until indigence was determined. Many parents went to court not knowing their rights or the process because they could not find legal assistance in time for the 48-hour hearing. Now any parent or guardian can get legal assistance from the Public Defender's office for the 48-hour CINA hearing regardless of whether or not they are indigent. The best-case scenario in many cases will mean an end to the case and the child is returned to the parents. In other cases, a continuance would be issued to allow the parents to provide additional information to the court that the caseworker and the Attorney General's office have not provided.

If, after the court has reviewed the evidence, it rules the child is a CINA during the 48 hour hearing, the parents would then apply for further assistance from the public defender's office and their qualification would be determined by whether or not they were indigent.

⁵ HB 259 prefiled by Representative Coghill in December of 1999 was passed by the legislature and signed into law June 6, 2000. The public defender's office welcomed the statutory change to allow them to legally provide assistance in an area they feel is necessary. Representative Coghill recognized that when a child is removed from the family home, the effects can be traumatic; so much so that the parents are unaware of what has just happened, why it has happened, and what should be done next. The common situation is that the parents are distraught because their child has been removed by the state and feel intimidated by the judicial process for CINA determinations. They don't even know they can ask the judge for a continuance to seek legal advice.

⁶ See Emergency Custody chart on page 11.

doubt; it's not very convincing. We are at the very beginning phase of having a judge serve as a check on the system. If the judge finds no probable cause, the case is dismissed. If the judge finds there is probable cause, then the next question is placement. Where should the child be? The judge has to decide whether or not the child can go back to the parent's home with supervision by the Department and be adequately protected, or does the child go to the physical custody of OCS. If the child is placed in OCS's custody there is what we call a removal finding. These magic words mean the court must decide two things. Is it contrary to the child's welfare to remain in the home? Is there is imminent risk of imminent physical harm or clear and convincing evidence with expert testimony that the child will likely suffer emotional or physical damage? For removal, the judge must make both findings and both findings apply to non-native children and native children.

At this stage the judge does the first inquiry of placement preferences⁷. The IWCA placement preferences are: (1) that the child be placed with the child's extended family; (2) tribe, same tribe; and (3) other Indian family. So the judge will be asking the social worker at this point to tell me about where the child is being placed so I can make findings as to placement preference. All we are all trying to do is get the children into placement preferences. The reality of the placement preference for the Department, the guardian ad litem, the parents, and the judge is Alaska's geography, which is, the placement preference dictates that the child go to Barrow, but mom and dad are in Fairbanks. Mom and dad are going to be in treatment in Fairbanks. It means that the child is from Ketchikan, but mom and dad are in Anchorage. So we are always trying to balance that tension between complying with preferences and keeping the child and the parent in the same community so they can continue their contact. It is especially important because we are talking almost exclusively about infants, toddlers and pre-schoolers, and some grade schoolers. We are talking about little kids for whom one month is a lifetime. So, this tension is really important in terms of the placement preferences and helping families.

After temporary custody is decided, let's assume in this case the judge either places the child with the parent with Department supervision or in the Department's custody. At the end of that hearing the judge schedules the trial. It has to be within 4 months, 120 days of when the child was taken into custody. This becomes a challenge as you can imagine because at this time we sometimes have from four to seven parties. We are now all going to open our calendars and try to come up with a date that everyone can be there. We are doing this with the Attorney General's Office who is overbooked, the Public Defenders Agency who is overbooked, and the Office of Public Advocacy; all who are juggling trials in other locations with other judges, and this becomes quite challenging.

We have to come up with a date when the witnesses will be available, when the judge is going to be available, and when the attorneys are available. These are the kinds of cases, and I think the public defender will tell you as well, you don't want to just hand these people off to somebody else all the time. Once they have a lawyer assigned, and they meet with their lawyer, you want them to have a relationship because it is part of making these cases work. So just giving them the person that is available that day does not work well for these cases.

⁷ See Temporary Custody Chart on page 12.

Emergency Custody

48 hours

AS 47.10.142 CINA Rule

with court order

without court order OCS may take

- (1) abandonment 47.10.013
- (2) neglected + immediate removal necessary- 47.10.014
- (3) physical harm + immediate removal necessary to protect life or med. Attorney
- (4) child or sibling sexually abuse 47.10.011(7)

OCS must

- Notify parent or custodian immediately
- 2 file petition 24 hours
- 3 court hearing 48 hours

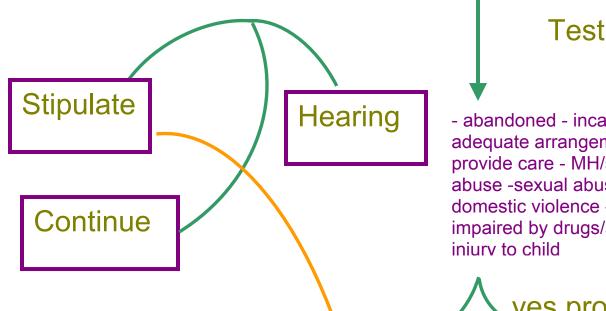
OCS can release child

Temporary Custody

120 hours

- (1) Hearing within 48 hours if Emerg Custody
- (2) Parents have attorney/GAL
- (3) Temp Custody Hearing agree or Judge decides probable cause CINA

Short Notice for all



Testimony

- abandoned - incarcerated and no adequate arrangements - unable provide care - MH/sub abuse - physical abuse -sexual abuse - neglect domestic violence - mental illness impaired by drugs/alcohol -mental injury to child

no probable cause dismiss

y<u>es</u> probable cause then placement

1) <u>OCS</u>

2 parent with OCS supervision Remove from home test

- 1 contrary to child's welfare
- 2 ICWA + imm. Phys harm or cl + conv evid w/expert testimony - likely suffer emotional or physical damage Placement Preference or good cause

Set Trial within 120 days

After Temp Custody

- Schedule Adjudication Disposition
- Find Missing Parent
- Find/notify Tribe
- 4 Relatives?
- 5 Service treatment visitation transportation
- 6 Visitation
- Paternity Testing/Evaluations
- 8) Case Plan
- 9 Mediation?
- OCS can dismiss/return child

trial within 120 days

days attorney available witness available Judge available



The next thing the judge will start harping about is finding the missing parent. This is the father that no one knows where he is, or this may be the mother who has been out of contact. So we start looking for this missing parent, trying to track them down. We talk about paternity testing and evaluations that are needed. We notify the tribe, if they have not been notified, though in this jurisdiction the tribe is frequently notified at temporary custody. We begin looking for relatives so we can work on the placement preference. Are there aunts, grandmas, cousins out there who we can get to help? I think this is the most important point in the whole system for services, which is what I was talking about earlier - front loading services.

If you are at this point and you have to have a substance abuse assessment, and the line is sixty days to get in; the whole system comes apart. We are going to be at trial in 120 days and if it takes you sixty days to get an assessment, and if people miss appointments, which these families frequently do, we need a system that gets them right into services. Other things like transportation, substance abuse treatment, and mental health evaluations – all those kinds of things need to be considered as needed services. The judge inquires about visitation, how and when the parents are going to be able to see the child, and the child the parents? We operate on a state government system, which is from 8:00 a.m. - 4:30 p.m. Monday through Friday with the exception of Anchorage, which has this wonderful system available through a grant, which allows parents to see kids on nights and weekends. In the rest of the state it has to be done during business hours.

Court Review of Temp Custody

Rule 10

If circumstances re: child's placement change in this temporary custody period, any party may request court review continued temporary custody.

Next, the department begins their case plan. We try to talk to the parties about mediation. This is a case where everyone gets together and talks and looks for a solution. During this time period the department can dismiss the case and return the child at any time without a court order. The judge issues a pre-trial order. The pre-trial orders vary from place to place. It is important to remember that a parent or the guardian ad litem can seek review of this temporary custody at any time

The next big court stage, which actually the judge is not involved in, which the rule requires, is a meeting of the parties⁸. All the parties have to meet. They have to meet together to see if there is an appropriate case plan in place for the child and the family. It has to be at least 30 days before the pre-trial conference and they have to write a summary of the report to the court. The goal of this is at that stage everybody is working towards the same end result for the child.

The pretrial conference, in our jurisdiction, usually happens about ten days before the trial. All the parties are present and the attorneys for all parties are present. This is where we get down and dirty, and figure out what is going to happen. I ask the lawyers "whom are you actually going to call as your witnesses; not all fifty-two people on that list? Which four are you actually going to call?" We talk about whether or not there is going to be an agreement, a trial, or if we anticipate an offer of proof, or possibly a relinquishment. The judge tries to tell them which day, based on all the other cases on the calendar, the pretrial conference is actually going to start. We talk about time limits, how long it is going to take, and who is going to get how much time. The GAL has filed a written report, the parties have filed a pre-trial memo, and the department has filed a predisposition report. So we have all that information in the file.

Adjudication and disposition⁹ is a major stop in the road after temporary custody. This is the trial that is held within 120 days. Again, they may stipulate; the parties may agree. It is very common in our jurisdiction at this stage for the Attorney General's Office to have circulated a stipulation, which is a proposed agreement for all the parties – the lawyers, the guardian ad litem and the parents, to be talking about to see if they can agree.

If there is a trial it is like a regular trial. Witnesses are called, there is cross-examination by attorneys, and evidence rules apply. The State must prove by a preponderance of the evidence that the child is a child in need of aid, by the merits of the evidence. If the judge finds no, the case is dismissed. If the judge finds yes, we go on. Much like temporary custody, the judge decides whether or not the child should be removed from the home, should the child be in state custody or should there be removal findings or back with the parents. The judge has to find that it is contrary to the welfare of the child or of the ICWA, whether it is necessary to prevent immediate physical harm or the same test that we had before with the ICWA. The judge must also find whether or not the State has made reasonable efforts to return the child to home safely. Again, reasonable efforts for most judges come back to being whether or not services have been provided - mental health, substance abuse, visitation, parenting assistance.

Under the ICWA the test is a little different. It is called active efforts to provide rehabilitative program. Once again the judge is looking at placement preferences. Is the child placed under

9 Refer to Adjudication & Disposition Chart on page 19.

⁸ Refer to Meeting of the Parties Chart on page 18.

the ICWA family, extended family, or tribe? And, if not, is there some good cause exception for this child? In Fairbanks we do the adjudication and disposition in one hearing. In other parts of the state they do them in two hearings separated by several months. It is the way local practice has developed. We find ours is efficient and we are used to it and we use it.

Disposition is - will the child be in the custody of the state for up to two years, two years being the maximum? What is the goal? Is the goal reunification? What is the case plan for this family? What is the reunification going to be? Then you set a permanency hearing within twelve months. At this point judges give a warning about the timeline set in statute. What many judges do at this moment is to say to people, whether they stipulate or they go to trial, "I want to make eye contact with you and I want to talk about what is going to happen to your children. Six months from now is too late; eight months from now is too late. The department is going to be looking for a permanent place for this child and if you wait to engage in services, someone else is going to raise your child". What many of us try to do is say, as clearly as we can, explain what the timeline is, and this has to be the priority in your life, particularly with small children. So, although the law does not require it in anyway, this sort of warning of the timeline is what many of us are doing to try and engage parents and let them know the seriousness of where they are.

At the end of that hearing, we set the permanency change. This is another big change in Alaska. At the end of the stipulation or the trial, I turn to the Assistant Attorney General and say "what is the outside date for the permanency hearing." Locally we use twelve months from when the child first came into custody, that first day of custody. Other parts of the state use a later date. At that hearing we are trying to determine how people have done, and what is going to happen with this child in the long-term. The Office of Children's Services does a report, a written report, which the parents have, the guardian ad litem has, and the judge has ten days before the hearing¹⁰. It outlines the permanent plan. The permanent plan may be that the child is going to return home, because the parents have made progress, and the child has made progress. The permanent plan may be placement with a relative. We have many children with parents who don't live together. The permanent plan may be that the non-custodial parent in Idaho is going to either get a custody order or modify a custody order so that he or she can care for his or her own child. Adoption, guardianship, and we have some children still for whom the appropriate longterm plan is long-term foster care. The judge makes findings. Have there been reasonable efforts to reunify this family? Have there been active efforts under the ICWA? Many questions are asked. Has the department made reasonable efforts to finalize this permanent plan? Has the parent made substantial progress to remedy the situation? This permanence hearing is a new concept and is based upon the human concept that children should not spend long periods in foster homes waiting for parents to be able to raise them and provide the best care. For most children we know that foster care means moving. They are in a series of homes, moving schools, moving friends, losing contact with extended families, sometimes leaving their villages or towns or their communities, changing therapists, and all these things effect a child's developmental ability to grow emotionally, trust other people, and stay out of the criminal system.

If reunification does not happen, the department is required to file a petition to terminate parental rights. One of the things we are seeing is what I call the safety valve on termination of parental rights.

¹⁰ Please refer to Permanency Hearing Chart on page 20

Not every case should have a termination of parental rights. We still need some individualizing. There is a provision in the law called "compelling reasons," and in our jurisdiction we do it by motion. The department files a motion for a finding of compelling reasons, and they lay it before the judge. The reasons why we don't think we should file a petition to terminate parental rights include a child who is very closely bonded to that parent and is an eighth grader and is not likely to find a long-term adoptive home; or a child who has special medical needs and needs to be reunited with the parent under certain circumstances; or a parent who although slow, is starting to understand and we would like another six months to see if they really got it.

So there is this outlet for those cases for the judge to find compelling reasons and not terminate the parental rights at this time. I rely a great deal on the guardian ad litem's recommendation at that stage, because there is not always, but almost always, a compelling reason for the parent to extend the time for the petition. Whether or not that is a compelling reason for the child, statute tells us two very different things, and so we rely heavily on the guardian ad litem in those cases.

The law requires the judge to set the petition to terminate parental rights within six months. So again he has all these parties with their calendars open in the courtroom and we are trying to find a date in which everyone can schedule another trial in town and can be prepared. We rely on the evidence in those trials that has been previously presented. So this evidence from the temporary custody hearing, the evidence from the review hearing, and evidence from the adjudication hearing are all evidence that the judge doesn't rehear again. Those trials go from three to ten days. We have had them in Fairbanks go as long as four weeks, we have had some extraordinary long ones. They take a long time. There is a lot to be said and if you think about all these parties, many of the lawyers have heard me do the math. Each witness you get you direct, cross, redirect, recross. And when you add all those parties in, sometimes you go around 12-16 times. So, the trials take a long time to conduct when you are using that process.

At the trial the department must prove, by clear and convincing evidence, that the parent has not remedied the condition or has failed to remedy it in a reasonable time, and by a preponderance of the evidence¹¹, and the state has made reasonable efforts to return the child, or in the ICWA, active efforts have been made to prevent the breakup of the family.

Under the ICWA, the standard is beyond reasonable doubt that the child continues to be a child in need of aid, including expert witnesses stating under oath that leaving the child with the parents will likely result in serious emotional or physical damage. At these trials two other things can happen and they do fairly frequently.

One is relinquishment, meaning that after the petition to terminate is filed, the parent comes in and relinquishes custody. They come to some peace within themselves that the best thing for their child is to be raised in the home they are in, or with some relative or someone else. So, we take those relinquishments. They must be taken in court, and the judge must assure that they are volunteering under the ICWA. It is almost kind of a ceremonial process in some respects.

17

¹¹ Clear and convincing evidence generally means proof beyond reasonable or well-founded doubt. Preponderance of the evidence is taking all the evidence presented and determining the evidence is more convincing in one direction than the other. Black's Law Dictionary indicates the word "preponderance" means denotes a "superiority of weight".

The second is what we call an offer of proof. I call this the "letting it happen." This is the parent who chooses not to come. It is the parent, who for whatever reason, does not participate. Sometimes it's the relinquishment without signing the paper. Sometimes it is because there are other issues, mental health, or substance abuse issues or such that they just lack the ability to participate. In those cases rather than do a ten-day hearing, what usually happens is the state presents in summary form all of its evidence, and the judge makes a decision based on the summary of the evidence.

Meeting of Parties

Who – all parties (attorneys + parties) – shall meet < telephone in person</p>

What — to ensure an appropriate case plan is in place for child & family and

When — at least 30 days before Pre-trial Conference

Do

- within 10 days of meeting file written summary w/court of meeting

Adjudication & Disposition

Rules 10.1, 15, 16, 17

- trial or stipulate
- trial witnesses, crossexam, evid rules burden of proof - OCS

preponderance of evidence CINA

no =
dismiss yes - go on

State custody or parent (removal findings)

- contrary to welfare or ICWA necessary to prevent imm phys harm or cl/con evid w/expert likely serious em/phys dmg if left home (clear & convincing evid.)
- has state made reasonable efforts to retain child home safety or ICWA whether active effort made to provide rehab programs
- C ICWA placement preferences
- Disposition custody state > 2 yrs goal reunification?

 Case plan set perm hearing visitation

Judges - warning time line

parents involved 9-11 months

Permanency Hearing

Rule 17.2

- schedule at adjudication/disposition
- w/l 12 mo. of removal
- Big Change

 Perm. Hrg

 Pet. Terminate or compelling reasons
- OCS report due 10 days before hearing
- Perm. Plan
- return home < Parent Child progress
- relative placement
- noncustodial parent modify custody
- adoption/guardinaship
- long term foster care
- 6 Findings:
- reasonable effort to reunify?
- active efforts remedial services? ICWA
- reasonable efforts to finalize perm. plan?
- parent made substantial progress remedy?

Purpose:

Children not spend long periods in foster homes waiting for parents to be able to resume care. Foster Care means moving homes, school, villages & towns, friends, therapists, & effects child's ability to dev. emotionally, trust, learn, & love.

Finally, the review procedures: throughout this entire process the parent or the guardian ad litem or the department may seek review of any of these orders. Under temporary custody they can request a review if the circumstances change, or visitation if a parent or the guardian ad litem is unhappy with how visitation is being conducted; I see them coming in all directions. The guardian ad litem may come in to reduce visitation, increase visitation, stop visitation, or change visitation. A parent may come in under any of those and ask the judge review that visitation. Whenever a child is moved from one placement to another, one home to another, a residential treatment facility to a home, the department is required to give a notice to all of the parties. The purpose of that is so that any party that objects to the child being moved can get into court and be involved if they think it is not in the best interest of the child.

The disposition order, the final order after the trial, can be reviewed at the request of a party. There is a catch all phrase in the rule "other review upon motion or bequest." By filing a motion with the court and saying "there is a good reason for you to look at this, judge, I want you to review this" the trial can be reviewed.

What I have tried to do is walk you through, not what are the most extreme cases, but the center of the road cases, not all of the exceptions. We find now that we also have a very large - what we call post termination caseload. We have shifted these kids and now we have all these kids (not all, but many kids) in whom termination has occurred and we are trying to get them into permanent placements, frequently adoption or guardianship.

So even though I have stopped here, the department is required to do a quarterly report every three months. We are looking at those kids that do not have legal permanency. Judges are haranguing the department about getting home studies, subsidies negotiated, those kinds of things, so that we can close our files. Nothing makes a judge happier than to close a pink file, because we know that when we close a pink file we have come down a very long road and that a child is now in a family permanently and the state is no longer involved. So we are always trying to move in that direction.

Review Procedures

Rules 10(e) 19.1

- Temporary Custody upon request if circumstances t.c. change
- Visitation request review hearing
- Placement Transfer notice required party feels contrary to Best Interest of the Child
- Disposition Order upon request of party removal no longer necessary per prima facie showing
- Other Review Upon Motion Request

QUESTIONS AND ANSWERS

What would be the reason for long-term foster care?

Judge Steinkruger: I will be really blunt. I see the long-term foster care usually for adolescent boys who cannot be maintained in families, usually because of their extreme behavior problems related to assault, violence, mental health those kinds of things and we just don't have somebody that can take them. People work with them as long as they can and they burn out and they move to somewhere else. Those are the ones I see the most often.

Rayna Hamm: Another one is subsidies when you get adopted. Some of these children are not going to graduate from high school until 19 or maybe even 20 and the people who do this, a lot of times, need that income beyond their 18th birthday. So even though they have made a commitment to the child they need that funding. It would be nice if those subsidies could continue until they are out of high school.

Judge Steinkruger: I can also think of a couple of cases that I have in which the children are so needy that they can't be maintained in a foster home and they are in residential treatment related to mental health treatment and so they need residential care.

Rayna Hamm: One more situation I can think of is children who are perhaps still bonded to their parents. Even when the parents are very dysfunctional if those children don't want to be adopted, don't want to make themselves a part of another family and they have, at a certain age the right to refuse to be adopted, that would be another one.

Judge Steinkruger:

You are right. I did a case recently in which I found the department had met all the grounds for termination of parental rights but I found it was not in the best interest of the child to terminate, given his age and his bonding and it was unlikely that he was going to find a long-term family. So those are some of the ones we see.

When you get to a termination of parental rights, my experience is that some of these parents are relatively unsophisticated. Are you comfortable that we are getting good enough legal counsel for those parents to be able to present their side of the argument when they appear before you at the termination hearings?

Judge Steinkruger: I can only speak for my jurisdiction here in Fairbanks, but I am extremely comfortable with that. We have a situation where we don't have young green lawyers without much life experience or legal experience doing those cases. We have some of the old boys and girls doing those cases and they have a lot of experience with them and they have usually very good client communication. The client may disagree but they certainly have people that are experienced in doing these cases. So in my jurisdiction I don't see that as a problem.

In the beginning stages, how broad is the interpretation of probable cause?

Judge Steinkruger: Probable cause is very broad. Probable cause is the level that historically we use for search warrants, arrests, it is the lowest level of proof. I would say at the same time, although many of us know probable cause is the level, at least in my experience, the evidence that I see at this stage is usually more than probable cause.

Throughout the different stages do you have the percentages of the children that are returned to their parents versus the children that end up in alternative care home, throughout the entire thing?

Judge Steinkruger: The court system doesn't keep those numbers. I don't know if the department keeps those numbers or not. We don't keep any kind of statistics like that at the court.

How can you be certain that the way you are doing things now is sufficient if you don't have a tracking device? Wouldn't you think that would help you access whether or not the current proceedings serve the parent and serve the child; wouldn't that be a way to track things statistically?

Judge Steinkruger: It would be an interesting number to look at, I think. But from my role as a judge, I do each case individually and I am deciding each case individually and so I am not looking to see if more kids should go home, or if more kids should go into foster care. It is just the circumstances of each individual case and whether the department meets its burden of proof.

Josh Fink: I am with the Office of Public Advocacy and the attorneys in Anchorage in the Public Defender Agency doing parental representation have been there at least five years if not longer. The attorneys OPA uses, that's their specialty, that's all they do. So I think that the parents are very well served by the attorney's that are appointed either representing the Public Defender Agency or through the Office of Public Advocacy.

Judge Steinkruger: I would add that about five years ago I started on a rampage about why did people that are charged with rape and murder get the best attorneys and people who have their children at stake get the newest attorneys. I am not responsible for that, but I think there has been recognition around the state that these are very important cases and that they deserve the experienced good lawyers rather than this being an area for training up new green lawyers when they come into the offices. I have seen over the last ten years that the quality of people and the level of practice - these are not entry level jobs anymore. These are jobs people are doing as part of their career as lawyers, so I think there has been a significant change in this state.

Attorneys and social workers are often overwhelmed with the cases. The attorneys may be very good attorneys, they may be very experienced attorneys, but do you find that maybe they are overwhelmed with their cases and really don't have the time to prepare as they would for a murder case or a rape case or things of that nature?

Judge Steinkruger: I think there are two parts to that – weariness, yes. If their caseload is very high and these cases are very time intensive. If you think about it, the time to make the phone calls in one case, to do some little thing and doing everybody's voicemail and return calls and trying to make some very little progress in a case by telephoning all those people. The biggest part of a criminal case is you and the DA or the DA and the defense attorney. The hard part of the CINA cases is you are talking about you and four to six parties; they take a lot more time to do.

The other thing that I think happens to lawyers and they can speak more to this than I can, sometimes it's difficult to engage your client. If you have a client that has significant mental health issues, substance abuse issues, being able to find them, get them to return calls, keep appointments, it sometimes takes more outreach then you have with the criminal cases and so these cases are more work and the lawyers are overwhelmed. I am not often concerned about the preparation. I think the other sociological factors of the lawyer and the client being able to form a relationship plays into it.

Ethan Schutt (attorney for Tanana Chiefs Conference): I think a big problem that attorneys have in representing parents in these cases is their clients disappear. So you have constituents (parents) calling who are saying OCS is doing this and doing that. A lot of time the parents are calling the tribe over and over again. They may be calling the social worker over and over but they often times are not contacting their attorney. They aren't responding to their attorneys and often times the attorneys don't even know where they are. So attorneys certainly can't advocate for a client they can't find. I think that a lot of times these terminations go by offers of proof because there is no client there and there is no way they can test the offer of proof. So that is something I really encourage people to suggest to the parents - definitely let your attorney know where you are at all times and engage your attorney and respond to your attorney.

Rayna Hamm, Director of OCS, Fairbanks - Case Management



I have worked for the Division now for about 32 years and am senior around the state. I continue to love my job, stressful and difficult as it is. A lot of the reason is the clients and a lot of the reason, too, is the people we work with, even in some very difficult situations. A lot of people here in this room and a lot of people around the state, make this job possible. Also, I really believe that social workers and child protection can make a difference.

I wanted to say first that coming into an emergency custody situation, before we even get there, the social workers have had to take the report of harm (ROH). They can come in from the schools, the community, the families, the neighbors – sometimes even from the children themselves. The caseworker goes out and does an investigation and tries to determine if the child can safely remain in the home. The front-loading services that Judge Steinkruger refers to is after we have taken custody.

I want to make you aware that we have social workers trying their best to provide services to children in their homes, without removing them if we can. That is very important to us to try and do that first. If that does not work and we are called back in or the safety of the child is at risk, then we may have to take custody. Generally speaking, the division takes custody of somewhere around seven percent of the reports of harm that we get. It is a small number. But the workload is very intense, it's very high labor, so there is a lot of work that goes into just that seven percent. The majority of work at any OCS office around the state is going to be spent regarding the children we have custody of that have been placed with relatives, sometimes in their own home or in foster care or in institutions. That is a very important job.

ICWA is a federal law, which covers all fifty states. If Indian children are here from other states, we must deal with them under federal law. Sixty percent of the children, again this is a general number it may vary from month to month, but 60% of the children in OCS custody are native children. So it is critical that our workers be able to deal with the ICWA.

Our workers are trained in two major things, state law (CINA) and the ICWA. I wanted to add one more under legal parties in a case. Under ICWA cases there may be another party and that is the Indian custodian. Working within the ICWA, we have to rely on our social workers and when I teach the ICWA, which I do around the state, I teach them first from the definition of the word. They have to understand that ICWA is a very complex law and they have to understand the definitions to be able to work within it. An <u>Indian Custodian</u> is an Indian person who has been given temporary care, custody or control of the child by the parent or by the tribe. If we remove a child from an Indian Custodian home, they will become one of the legal parties. I bring that up to show you that there is yet one more possible party and perhaps even an attorney for that party too.

At the point that we take emergency custody and we are getting ready to go into court, Judge Steinkruger talked about tribal intervention. Another part of the ICWA that I want to talk about is notice. The tribes by law have a right to receive notice about court hearings that are coming up so they can intervene and become a part of that court hearing. Because the notice that is required for the very first hearing, the probable cause hearing that takes place within 48 hours, cannot be gotten out to the parties that need it, especially the tribes, the social worker is required to give what we call actual notice. They must contact the tribe. If they know who the child's tribe is, they contact the tribe and let them know there will be a court hearing at such and such a time, tomorrow afternoon and we want you to be there and be a part of it. Then the tribe, if they intervene, as Judge Steinkruger has indicated, has the right to call witnesses and so forth.

The difficulty that the social workers have in the very beginning of the case many times is determining who the tribe is. It may be that the father is from one tribe, the mother is from another, and they have lived in a third village. There are some very complicating factors and the social workers have to work that part out as fast as they can to try to determine who the tribe is. After they have gone through the temporary custody and if the OCS has been granted custody of the children then we are into all of these kinds of things. This is a huge workload and there are some very tight timeframes for the social worker. Finding that missing parent, dealing with paternity, and finding and/or determining the tribe has to be done quickly if people are going to have their right to appear in court, their right to defend themselves. Sometimes we find parents and we did not even know they were the parent of the child. Sometimes we will find parents who are living in other areas and have no idea their child is in a situation considered dangerous by the OCS. So sometimes it is news to them and so we have a lot of work to do to try and find them so they can quickly get an attorney and get involved.

Regarding the placement preferences for the ICWA, I want to talk just a minute about the fact that all children, not just our native children covered by the ICWA, need families participating in the foster care phase. Families by law are the first preference for foster care. This preference has been in State law long before it was in the ICWA, unless we can prove by clear and convincing evidence that the child wouldn't be safe there. Of course we all tend to believe that even in some very dysfunctional families, if the social workers will look long and hard at the various extended families, relatives and so forth, we may find some very good relatives. And if we look to ourselves probably each one of us can say yes, well we have some – maybe some dysfunctional family members in our family but half the people are pretty darn good parents. So we really try and find family members and determine their interest in being charged as foster parents or in the future permanent placement for the children.

When we use the word tribes we are referring to the ICWA defined tribe. It is the villages that signed on to the Alaska Native Claims Settlement Act. So there are around 226 tribes in Alaska. Although in my work prior to ICWA, and I was around long before it came into effect, the villages themselves did not necessarily consider themselves or didn't know, understand, or call themselves tribes. But over the years, I think the education has pointed out that under the ICWA they are seen as tribes.

ADOPTIVE PREFERENCES

- 1. Child's Extended Family
- 2. Members Of The Child's Tribe
- 3. Other Indian Families

Each individual village is an individual tribe. There are a little over 500 tribes in the whole United States and Alaska has about 40 percent of the nation's tribes. If you stop and think about how many different governing bodies a social worker may have to deal with, compared to outside. If they were in Arizona, perhaps they only have to deal with maybe 12, 15, or 18 villages on the Navajo reservation and they only have to deal with one tribal government. But up here, they have to deal with each individual tribal government village by village. Again, that is time intensive. This means more phone calls, more faxes, more emails, more telephone-tag trying to get together, trying to work things out. It also means that they are dealing with numerous more personalities, if you will. I mean a village or tribal council has its own personality just like every administration. Sometimes it is a political party, but - it has a personality. So as those tribal governments change, the workers may find that the values and ideas of the tribal government are different from the last government. The way they view working with the children is different. A social worker that has had a successful working relationship with a tribe for a period of time may come upon a time when the new tribal government no longer feels the same way. That might happen in the middle of a case that they are already working on and the tribe may want to go in a different direction for the permanency or placement. So it can be very difficult, it is a very intense job and a lot of different angles that the social worker has to think about.

The foster homes that are licensed or approved under the ICWA is an area that has been difficult for us until recently because the tribes have not done foster care licensing in the past. Right now there is a project that is being worked on that may bring about some tribal licensing for day-licensed homes and we will be able to place there. An authorized non-Indian licensing authority approves the Indian Foster Home license. OCS is a non-Indian licensing authority. We try very hard to license native homes all around the state, all around this region. If we have a licensed Indian home, that is a number three preference.

I want to say that the preferences as listed in the charts, after some court battles, are in a preference order. This is the order that the social workers are expected to deal with and expected to try and place. They should not come in and just place down here in number three if they haven't checked out and ruled out preference number one, the family. They need to always come down through the preferences and try to place them at the top preference first.

They also have to take into account any special needs for the children, and so forth; that also applies for the ICWA. These option preferences are slightly different and I assure you and I don't have time to go into it this morning, but I work with the tribes and the social workers and we really try to teach this part so that they learn how to work through the very difficult situations. But the adoption preferences when they are in foster care, for instance, there is none in the adoption where the tribe can approve a home. That makes for some very difficult situations because you may start a child out in a foster home, that foster family wants to adopt, but perhaps they do not fit within this preference. Perhaps they are an Asian family or a black family and they do not fit any of these adoption preferences of extended families, members of child's tribe or other Indian family. So we get into some situations where there has to be a lot of

negotiating, a lot of understanding with the Guardian ad litem, the tribes, the parents, and so forth as we work towards those kind of placements.

Representative Coghill asked Rayna to give us an idea of the timeframe for a negotiation.

You mean how long a negotiation may take – to negotiate? Well, it would vary case by case and would depend for one thing if the social worker had exhausted all of the other possibilities because that is one of the first things the tribe is going to want to know. Did you exhaust all of the other possibilities that you are required by law to look at of the preferences?

Representative Coghill: One of the reasons I was asking is everything in here is time sensitive and I just wanted to know as you make those decisions. How does that affect the timeline?

Rayna Hamm: It does not delay the timeline; we are still bound by these timelines. But I think to answer your question, I would say we work on them as quickly as we can and we try to do the best we can. Sometimes there are cases where we agree with the tribe, we agree to disagree, or where we are just plain in disagreement. Sometimes we go forward doing what we believe is in the best interest of the child, or perhaps what the GAL believes is in the best interest of the child, but we do not always have the luxury of working it out.

One of the things that I can tell you that will help the situation though, is tribal intervention. It is so critical that the tribe intervenes right away, at the very beginning. Even if they disagree with us, chances are that through good communication, and I mean we have to really communicate, we will be able to come to some kind of agreement that is in the best interest of the family and the children. We may come to an agreement on the final permanency issue, which may be adoption, foster care, or guardianship. It takes the tribe intervening at the very beginning and really being a part of that child's legal process and taking note of that and being a part of it. Tribes have the right to intervene or not.

Judge Steinkruger: I was just going to add this is a place where you can really see the tension between the individual child and the overall system. For example, you have a child that comes into custody shortly after birth in Fairbanks. You want to keep the child in Fairbanks hoping that the parent will get into substance abuse treatment, maybe long-term substance abuse treatment. You place the parent in a residential program where they are working on the substance abuse, and you keep the baby in Fairbanks in foster care so the child and the mother can bond and be together. You work on that for a year; meanwhile you have extended family out in Rixit (we will say). So, this child is bonding to the foster family, you are working on trying to get the child and the mother to bond, but it does not work for whatever reason. Now you have this child that has known no other caretaker since coming home from the hospital – and somewhere between ages one and two you are going to move that child to a family they don't know in Rixit. That is where you get the tension between the child and the greater good.

Rayna Hamm: When I am teaching, I give some of the descriptions of some of the conflicts that occur, some of these kinds of tensions that occur. I tell my workers, these are not easy decisions. I think they are Solomon-like decisions that sometimes have to be made by the judges, the social workers, the GALs, and by the tribes themselves. There are some very emotional times in these cases because you want to stay as professional as you can, but there are

some very difficult and hard decisions to make. The kinds of things that were just described, is one of those.

So if you are going to move the child who has been in a placement in town trying to be near their mother all of this time and it is not going to work and we have to move on to adoption, then we try to encourage our workers to do the best they can. It's a lengthy transition with a new family coming in, meeting the child, spending time, gradually spending more time until they actually take the child to the hotel for the weekend or night. There are some ways we can ease that transition, but it is also an expensive proposition to make that happen.

I want to speak too in terms of services. Services are for all our families, not just Indian families. Judge Steinkruger said that one of the most important points is getting those services provided as quickly as possible and that they be appropriate services. This is an extremely time consuming and difficult situation.

It was already mentioned about those waiting lists for such things as alcohol treatment, substance abuse treatment, anger management, violence programs, parenting classes, and so forth. The other problems for the majority of our villages are access and transportation. My region covers eighty-four communities. All but about maybe ten of those do not have road systems. So how are you going to serve those families that are remote and give them a fair shot at getting services, getting help, so that they can get their child back safely? How to do that in these small villages is a huge challenge. Again it is not a cheap item either, just the travel alone is a horrendous expense.

So it is absolutely critical if parents are going to get their children back that they get the services they need. This is one of the most rewarding parts of the social workers job is to see a family get into treatment and take to it. And maybe they fight it in the beginning but when they really start to take to it, you actually see the little light bulb dawning and you see parents realizing that there is a different and perhaps a better way to manage parenting for their children. That is a very rewarding time for social workers. And we wish it could happen every day all of the time.

But for our native children, as Judge Steinkruger mentioned, it is a higher standard for the services we have to provide. We have to provide what we call "active effort". For the other children it is what we call "reasonable effort". The ICWA specifies that we must provide active efforts, which means that the social workers must go a step further. They don't just say you need some alcohol treatment, here is the phone number. The caseworker will call the treatment center and arrange for treatment. They may actually help make the call with the client in the room. They might do a lot of education with the client about what the services are like. In an area where that exists, they might provide bus tokens or cabs to get to the services. In some cases, we get into counseling/therapy situations, that some of the clients might be fearful about. We have had workers go to the first session, at least long enough to get the person introduced to the therapist and to make them feel more comfortable. Those would be considered active efforts.

And in our ICWA cases we have a higher burden of proof on native cases than we do on non-native cases. All the way through the system it is a higher burden of proof. So we have to prove those active efforts or we may not be able to prevail in the case. So that is another part of ICWA.

FOSTER CARE & PRE-ADOPTIVE

- 1. CHILD'S FAMILY MEMBER
- 2. FOSTER HOME LICENSED, APPROVED or specified by the Child's TRIBE
- 3. INDIAN Foster Home Licensed or APPROVED by an authorized NON-INDIAN Licensing Authority
- 4. Institution Approved BY AN INDIAN TRIBE or Operated By an INDIAN ORGANZATION

Another area of tension as we move to permanency is that so many of our families have drug and alcohol problems. While we are trying to figure out if we are going to have the child go into adoption, foster care or return home and these tight timeframes one of the things we know about alcohol treatment is that relapse in alcohol treatment is something that can certainly happen and maybe a part of a lengthy process. It has never been clear or comfortable to me exactly how much the federal government took that into account as they set these timeframes. Because absolutely the shorter the time frames the better it is for the child. But if that parent has a chance to get through the treatment and successfully complete it and be able to parent maybe they are going to go through a relapse before they get there. So that is another real source of tension. The social workers and the GAL on some occasions are moving forward anyway, even in spite of that, to move the timeframe more quickly for the children. It is another very difficult area.

There is a clause in the ICWA that says court decisions can be invalidated if we do not follow certain sections of the act. So it is very critical that the social workers pay attention to this. You do not want to have any more children then necessary changing in mid-stream to a different plan, a different situation, because you haven't done your work right, or going to a different placement because you, as the social worker, have not done it properly and have not followed the law.

I wanted to just say one more thing. There are certainly here in the Interior and throughout the state, there are tribal courts in villages that are very active - some more active than others, some with a longer history than others. But there are some that are very active and they are taking very strong notice of their children and what is happening in their children's lives and play a very important part in the child protection scene. Tribal governments are and have been for some years taking custody of tribal children before we get to the cases. There is also now, in the last couple of years, a court decision that allows OCS to transfer jurisdiction to our Alaska tribes if, there are some ifs, if both parents agree and if the tribe has a cause. A tribe can come in and ask that jurisdiction be transferred from the state court out to a tribal court and that is happening more and more frequently. I suspect you have been through some of those situations.

QUESTIONS and ANSWERS

Is it possible for a child to be placed with a family or a foster home out of state?

Yes, it is very possible. Quite often in the search for a family member, we are looking at family that are out of state. It is another complicated procedure called "interstate compact on the placement of children". The compact¹², as I understand, is almost like a treaty. I think all fifty states are now involved. We do go through the process; we have the family in the other state studied. Unfortunately sometimes those cases fall to the lower priorities and it takes awhile to get that done. Yes, they can be placed out of state, but you remember that Judge Steinkruger said there is that tension. How do you keep a parent and child together to keep the bond going, if you have to send the child away to another village, another community or out of state?

What kind of procedures for follow-up after adoption?

There is really very little. There is almost nothing except with some of the private agencies in town or throughout the state that provides post-adoption services. The way our office gets involved is if we get new reports of harm, we will go back out and investigate, and that does happen. It happens in adoptive families, and sometimes even adoptive families have to relinquish the child. It is rare but it does happen. There is not enough service for these very difficult children that people have adopted, very difficult children. And if they are fortunate enough to be in a community that has services they may be able to get services for that child, but if not, the behavior for these disturbed kids can lead to failed adoptions, unfortunately.

Betty Rollins: I am a little confused right now. I attended foster parent training about a month ago and again at a meeting on Wednesday and according to Section 2 of the new policy manual I understand, and we were told, that foster parents at the ICWA, that when you receive word of a child and I have already had one case, as a native, you immediately turn this over to the tribe without an investigation.

NO – that is not accurate, but there are situations where we may do that. If the tribe has custody, remember, I just said, that tribes take custody. If the tribe has legal custody of children, then it is in their legal court system and we would call the tribe and notify them and then they would be the ones to go out and investigate it. If they do not investigate it or make us aware that they are not going to, then we would be the one to go out and investigate it.

I have a question about the social workers. Given the complexities of dealing with ICWA, do you have extra training or some sort of certification that the social workers had to go through to deal with these cases? It seems they have to know twice as much.

¹² Out of state placement can be a lengthy process because we have to rely on the other state doing a home study and sending a report to OCS. What OCS considers a priority may not be a priority to another state that has to utilize their resources to complete the report. There have been recent suggestions that Alaska would be better off hiring a couple of positions that perform the home studies and negotiates with the other state for placement.

The social workers go through an initial two-week training period at our training academy in Anchorage, called TOME. And in that TOME series, they learn a little bit of everything and in that there is like a three-hour section of the ICWA. Then in the next year of their employment, they are expected to take one of the advanced ICWA courses, which we are now teaching in all four of our regions. We schedule advanced training regularly and those trainings are running around two days. So the social workers do get some very intense ICWA training and the supervisors are trained also so they can help supervise the ICWA cases. We also have ICWA specialists. In each of the four regions there is one person who is an ICWA specialist and who helps do consulting and case reviews with the tribes and the social workers. Besides being in court a lot, we also do a whole series of in-house case staffing and case reviews. We have an entire ICWA committee that does nothing but review cases that have children that are native and we have ICWA specialists that sit in on those.

Regarding case management, as a state and OCS places a native child into the tribal system, how can we as a state agency continue to insure the safety of that child or the progress of that case, which is related to the other question? Because we have heard that once a child enters into the tribal hierarchy they are in a sense kind of left dangling, is there anything that we are continuing to do as a state in those cases?

First of all, and this is my own opinion, but I think I would have to take issue with the words "left dangling." I tried to portray that the tribes that I am aware of are extremely interested in their children. You know the tribes are going to make some mistakes. There are going to be some tribes that do not have the proper interest and concern about their children. They are going to make some bad decisions, so have we at OCS. We have social workers that are not as dedicated to their jobs as they should be. We have made mistakes over the years. We get caught up and don't follow policy or procedure. We go off on our own tangents occasionally. It is not all the time, it is not often. But I think the tribal social service system mirrors our own in both the good and the bad.

But also the thing I know from working with the tribes, and I have worked with tribes long before ICWA, is that they for the most part tribe after tribe, village after village, care about their children and they want to do the best by them. They do have some different ideas about how to carry that out sometimes, different than what we have. They may have different ideas about placement, different ideas about services to parents. Sometimes they have, in my estimation, more clout than we do with parents, because they have their own tribal laws and rules and in those situations they can put some very heavy pressure on parents to change, and to change quickly.

Dianne Olsen, Statewide Supervisor, Human Services Section, Attorney General's Office



I have been employed by the Attorney General's Office since 1981. I have worked in the Human Services Section the entire 23 years of my employment here. Since June 2003, I have been the statewide supervisor of the Human Services Section.

The Human Services Section of the Attorney General's Office is responsible for handling legal work for the Department of Health and Social Services (DHSS). Of the 24 attorneys in the section, 19 handle some Child-in-Need-of-Aid (CINA) cases as a portion of their caseload.

Some of these attorneys also perform other work such as adult protection cases, adult guardianship proceedings, civil mental commitment hearings, foster care licensing proceedings, Medicaid proceedings, and a variety of other work for DHSS. The Attorney General's Office has attorneys based in Anchorage, Juneau, Bethel, Fairbanks and Nome who are responsible for handling CINA cases. While we provide in-person coverage in the more active court locations, in many parts of the state we handle hearings telephonically. Anchorage attorneys cover cases primarily in Anchorage, Palmer, Kenai, Dillingham, Cordova, Valdez, Glennallen, and Unalaska. Attorneys travel weekly to Palmer and Kenai and to other areas as needed. Three attorneys are located in Fairbanks, and one of those attorneys handles cases in Barrow. Three attorneys in Juneau are responsible for CINA cases, along with other assignments, one of whom travels regularly to Ketchikan. Two attorneys in Bethel handle CINA cases exclusively. We are in the process of hiring an attorney in Nome to handle Nome and Kotzebue cases. In Kodiak, the District Attorney's Office handles the CINA cases.

Our CINA cases often begin by giving advice to the Office of Children's Services (OCS) on a specific matter, which may involve advice about whether sufficient grounds exist to file a CINA petition or to remove a child. If a decision is made to assume emergency custody of a child, an emergency custody petition must be filed within 24 hours after custody is assumed. A court hearing is held within 48 hours after the petition is filed. Many cases are resolved at that stage by agreement among OCS, the parents and their often court-appointed attorneys, and the guardian ad litem appointed by the court. However, some cases will proceed to a contested court hearing. The attorney's job at this juncture is to gather sufficient evidence and witnesses to demonstrate to the court that there is probable cause to believe the child is a child-in-need-of-aid. If continued removal from the home is sought, sufficient information must be presented to show that return to the home is contrary to the welfare of the child. In the case of an Indian child, the attorney must present expert testimony to show that the child is likely to suffer serious emotional or physical harm if returned home.

At this stage, the assistant attorney general assigned to a case is also responsible for providing notice of the adjudication hearing to the child's caretaker and grandparents, if their location is known. The attorney must also ensure that the notice requirements of the Indian Child Welfare

Act are met by providing notice by certified mail to each tribe that may be the Indian child's tribe.

If the court finds that probable cause exists to support the petition and grants custody of the child to the state, an adjudication hearing is scheduled to be held within 120 days. At the adjudication hearing, the court determines whether a preponderance of the evidence supports a finding that the child has been abused or neglected under the standards outlined in AS 47.10.011. Again, some cases will be resolved at this stage by agreement, while others will require a contested hearing at which the state must present sufficient evidence to demonstrate by a preponderance, or more-likely-than-not, standard that the child is a child-in-need-of-aid. If the court adjudicates the child to be a child-in-need-of-aid, a disposition hearing is set to determine whether the state will retain the child in custody for up to two years, and if so, what services should be provided to the family to assist the parents in regaining custody of the child.

After a child has been is in custody for 12 months, a permanency hearing must be held to determine a permanent plan for the child. Permanent plans generally provide for reunification, adoption, guardianship, or another planned permanent living arrangement. Because in the past, children often languished in foster care for a number of years, in 1997 Congress adopted the Adoption and Safe Families Act, which our legislature incorporated into state law in 1998. That law requires the state to establish a permanent plan by the time a child has been in foster care for 12 months. In addition, if a child has been in foster care for 15 out of the most recent 22 months, OCS must file a petition to terminate parental rights unless it can document a compelling reason not to do so. The assigned attorney generally assists the OCS social worker in preparing termination petitions.

When a petition for termination of parental rights is filed, a trial must be held within six months. At this stage, the attorney must gather sufficient evidence to support a finding by clear and convincing evidence that the child has been subjected to conditions that have made the child a child-in-need-of-aid and that the parents have not remedied those conditions, or, if they have remedied the conditions, it is too late to return the child because doing so would place the child at substantial risk of physical or emotional injury. In the case of an Indian child, the attorney must present the testimony of a qualified expert witness to support a finding that beyond a reasonable doubt it is likely the child would suffer serious emotional or physical harm if returned to the care of the parents. As in contested adjudication hearings, the attorney collects all available evidence, including the social worker's file and any records pertaining to treatment of the parents and the child. The attorney must also subpoena witnesses to present evidence at the trial. To prepare for trial the attorney talks to all witnesses, prepares child witnesses for the trial process, compiles exhibits, and prepares a pre-trial memorandum to outline for the court the facts and law to be presented in the case. Termination trials often take place over several days, and in some cases, over several weeks.

At all phases of the proceedings, the attorney must assist OCS in demonstrating that it has made reasonable efforts to provide family support services to the family. In the case of an Indian child, evidence must be presented that active efforts were made to provide remedial services.

During the course of a case, other issues will often emerge, involving visitation, the child's placement, and treatment requirements for parents and children. Parties to CINA cases

frequently meet informally to resolve these issues. If the parties are unsuccessful, the court will hold an evidentiary hearing, often on an expedited basis.

At all phases of a CINA case, mediation is available through a grant provided to the Alaska Court System. Mediation sessions are usually scheduled for an initial three-hour period, with additional sessions often required. Although mediation is time-consuming, our office has found mediation to be very helpful in resolving some of our more complex cases.

CINA attorneys perform various additional duties. They draft orders required by federal law in order to preserve federal funding various state agencies and for foster care. They draft pre-trial motions and respond to motions filed by other parties. Often, due to the nature of CINA cases, motions are filed on an emergency basis and expedited evidentiary hearings are held.

Attorneys serve on various committees to help improve the child protection system and provide regular legal training to OCS social workers.

Approximately 2,000 cases are open at any one time. Until the recent addition of new positions, caseloads averaged 150-160 cases per full-time CINA attorney. The U. S. Department of Health and Human Services recommends a maximum of 100 cases per attorney. American Bar Association ethical standards for agency attorneys issued in October 2004 recommend that attorneys handle no more than 60 cases. Thanks to legislative approval for additional attorney positions, we expect to reduce our caseload numbers to a more reasonable amount, or about 100 cases per attorney. Unfortunately, the unique unpredictability, pace and volume of cases handled by our section create a very stressful situation for Human Services attorneys, contributing to a high turnover rate.

Attorneys in the Human Services Section face unique challenges in delivering legal assistance to the Office of Children's Services. They are dedicated individuals who fulfill a critical function in the protection of the most vulnerable of Alaska's citizens.

Paul Canarsky, Public Defenders Office



The easy answer and the way to save time is to let the public defenders advance whatever point our client wants us to advance. If our client wants to relinquish their parental rights, we make sure that happens. If the client says I am going to fight this all the way, we go to trial. If our client isn't sure what they want, then we help educate them to decide what they want to do. So that is the short answer. But, I think it is a little fairer to say it is a three-part process.

(1) We educate our client, which means we advise them about the law and as we all know, this is the most complicated area of law there is. In a criminal case you go to jail or you go home; proof beyond a reasonable doubt, everybody has a sense of what that is.

To try to explain to someone, well, they can take your kid with the preponderance of the evidence. And if they want your kids for a longer time, they can take your kids if there is probable cause. If they want to take them away forever, its compelling evidence, unless it is an Indian child in which case it is proof beyond a reasonable doubt. Judge Steinkruger spoke to us for about a half an hour and the process is hard to remember, so we try to educate our clients as to what that is and it is not easy to do. Actually, more importantly we try to educate ourselves as to our clients. How did our client get to be in this situation? We all intuitively know about what is called the "trans-generational consequences" of alcoholism, emotional abuse, and physical abuse.

Typically, we represent the mother because the mother gets served with paperwork first and is the person who is in court at the first hearing more frequently. And almost always our client, mother or father, has had some tragedy in their past whether in their childhood or a huge financial setback, and so we are dealing with that. Trying to get past that, work through that, or understand that, so we can help them understand what is going on in terms of the case.

Bottom line, we try to get as much information as we can from our client which they may not know will help them with the case. So when we go to court and speak for the client, or when we go to negotiations or when we call the social worker or the Attorney General's Office, we can effectively advocate for the client. The second thing we do because very few CINA cases actually go to trial, is we negotiate. We let OCS know the stuff they did not know when they went to the hospital because this newborn baby was hopped up on cocaine, as to why that happened and demonstrate to them that it was an anomaly in our client's life not a pattern.

We talk to the guardian ad litem at these court hearings. We spend time educating people and maybe put our client on the stand. We basically are talking to everyone trying to resolve the case getting the matter taken care of so there is not a trial.

Probably all of us have missed a dental appointment, you don't really want to go, right, and then you think about a CINA mom, and I will talk about a CINA mom, because that is my usual client. She has her court appearance, and if you miss a court appearance you are not a good parent – right? The deck is stacked against you. She has got to make these visits with her children and usually she has got to be there early and they better be good visits, or you are not a good parent.

Often there are random urine analyses (UAs), which means she has to call in everyday and then if she is supposed to go in and give a sample she has got to get down there and usually OCS will give her cab fare because often our clients don't have cars. She usually has parenting classes and you better not miss one of those and often she has to go to substance abuse treatment. So, I mean it is like juggling five things and meanwhile everyone is looking at your life through a microscope.

It is just tremendous pressure on anyone; let alone someone who probably is challenged in terms of educational opportunities, socially, economically. I think of it as almost being from another planet and hearing all these educated professional people say do this, do this, do this, it is a real catch 22. I mean every parent loves their children, every parent is doing the best they can, and that is what you want to say to the judge. But the other message that you are hearing is, well, you can't get your children back until you admit that there are some deficiencies. It's hard to come to that point and say ok, I could do better. So, someone said do I feel overwhelmed? I feel overwhelmed every day, all day. There is always more I could do for my client whether a CINA mom or a delinquency client. I just do everything I can.

I have had this job since 1980 and I work with people who have been there longer than I have. You can't do this job unless you are pretty strongly committed to it. There are challenges everyday that you just can't meet. You can't get every child back. Not every client in a criminal case goes home, a lot of them go to jail. And of course the whole time and we do assign cases to individual lawyers, because we want to have that relationship. So there is a little trust there, both that the lawyer understands and trusts the client, and that the client hopefully understands and trusts the lawyer.

Most of these cases are resolved, because you come up with a case plan. Something I don't think has been put up here yet, is in addition to all these other meetings every certain period of time, the Office of Children's Services has to have a case plan review with notice to the parents. It has to be a written case plan and the parents are supposed to sign off on it. A lot of these cases are actually resolved at those meetings. So when you go to court, instead of having a trial for the adjudication, what you end up with is an agreement for a one custody order or maybe a one-year supervision order, where the parents get legal custody but the Division can come in at any time and check up on the kids. But the real focus is the case plan, this checklist, which hopefully as time passes gets shorter and then the children are returned home.

It is actually surprising to me because these cases are so difficult that a very respectable percentage of them do have a happy ending. The kids do come home. People call me and say tell me about this case, what is going on here. Well there is a statute, AS 46.10.092, which says while my clients can disclose stuff to their legislator or various offices, they can even give them stuff from the file; I can't talk about it. It is a misdemeanor offense. When people call my office, my receptionist is under orders that we can't even say whether or not we represent

someone in a children's case that is confidential. It would be a violation of law to disclose that. So we would love to talk about these cases because they are interesting and challenging, but we just can't.

In those cases, however, where there is no negotiated resolution, and I should also add, if I haven't, one of the negotiated resolutions we are seeing with some increasing frequency is what is called an "open adoption". Which is where there is a relinquishment of parental rights but there is continued contact with the parents.

I think that is in many cases just an outstanding result, because in the overwhelming majority of cases there needs to be contact with the parents and that continues to happen. Should there be an issue with substance abuse the adoptive parents can say no you can't see the child now, so it helps the child stay in a healthy environment and it gives the parents that continuing contact. Obviously if none of those other things work, we end up in court for the adjudication trials, we end up in court at the termination trials.

I am not in the legislature for probably some very good reasons, but it is hard for me to say to my clients there is a lower burden of proof to take your children away than there is to put you in jail. That is a tough one and I understand, I think, the public policy reasons behind that. But it is very difficult to communicate that with people and get them to really understand and accept that.

But I want to emphasize that our job is to educate our clients and if our clients say I want a trial, we go in there and we fight as hard as we can which means we ask the tough questions, we make the difficult arguments, we advocate for our clients. If the outcome here is their parental rights are terminated, I want them to say well at least my lawyer gave 100% and I have every confidence that the attorneys in my office do that.

One of the other lawyers just around the corner from mine, Jim Cannon, is doing some things in discovery that you can't do in criminal cases. I know from what I see in my office everyday that these cases are worked as zealously as murder cases, as kidnapping cases, and I would hope to go to the other end of the scale that our disorderly conduct cases get this same attention.

As an aside, most of the attorneys in my office of nine attorneys have 15 to 20 CINA cases but they also have 75 or 80 other cases. The average caseload in my office averages between 90 and 100 files. So our clients are asked to juggle and we have to do a lot of juggling too. My client wants to go to trial regardless of the odds, I am going to sit there with him and give it my best effort.

I want to say that what Judge Steinkruger said about providing services early, the big picture is we are starting to see FAS and FAE kids in the adult criminal system. If you can change a child's life, you are going to save the state huge money as juvenile, huge money as an adult. If you can change a mother's life or a father's life multiply that by three or four, or six. Whether it is preschool nutrition, whether it is parenting classes, ¹³ if we can help there, we are going to save money; we are not going to have to build jails.

¹³ John Coghill stated, that many of the parents don't speak the language that they speak either in the child welfare system or in the court system and that is probably a part of your job in the education – so when you said education that is part of it, helping them to understand the language.

John Franich, Office of Public Advocacy



I was struck when I was looking at Judge Steinkruger's list of the parties in the case about one thing. Virtually everyone that you see on this list of parties is entitled to have an attorney. If the social worker is there, the social worker is in court, the social worker's attorney is in court. Essentially the social worker gets to tell the attorney what to do. The client has an attorney. As Mr. Canarsky said, most attorneys' job is to do what the client tells him to do. If the client wants a trial there is a trial. If the tribe intervenes, often the tribe has an attorney in the courtroom speaking for the tribe doing what the tribe tells the attorney to do.

The guardian ad litem is in the courtroom without a client, the guardian ad litem has no client. The child has no attorney, but the child does have a voice and that is the role of the guardian ad litem to be the voice for the child in this process.

A guardian ad litem's job is to act as an independent advocate of what is best for the child. The legal standard is called the best interest of the child. We don't have an attorney-client relationship with children where they can tell us what to do. It is our job to be Solomon in the case, look at all the facts in the case, and make recommendations to the judge about what the judge should do. We are the only voice for the child. I have been doing this kind of work for 23 years and I can think of less than a handful of cases in which children have actually been in the courtroom participating in the procedure. For the most part the only voice for the child in the courtroom is the guardian ad litem.

So what do we do, how do we go about doing that? The role of the guardian, the job of the guardian breaks down into a number of things. The first thing that we do is to independently gather information about the case. Now we don't like to reinvent the wheel, we don't like to redo work that other people have already done, so one of the most important sources of information that we will go to is the OCS file and review what the social worker has already done. We literally go to their office and review their file. Then in addition to that when we are appointed, the orders here in Fairbanks and I assume statewide also gives us access to confidential information in other files. So we are going to schools and looking at school records. If there are medical or psychological records, or treatments that the child may be in, we have access to those other professionals. We are talking to those people as well gathering information. We are looking at court records, frequently if we are appointed as guardian ad litem for one child, this family may have had older children that have gone through the system; we are looking at other children's files. We are looking at other court files. We are looking at criminal records that one or more of the parents may have. We are also looking at the other circumstances in the child's life.

We are interviewing relatives, friends, and family friends, trying to gather as much information as we possibly can. At the same time we are talking with all the other parties in the case. Judge Steinkruger was smiling here when Diane was talking about the pre-trial hearing. Judge Steinkruger will frequently say in court, did anybody pick up the phone and make a call? Do you talk to each other? Yes, and sometimes the parties are so polarized in the case that it is the guardian ad litem who acts before mediation, acts as a mediator in the case. We are sort of the

neutral party that other people can rely on to communicate back and forth when they get to the point where they can't even speak to each other, so we try to facilitate that communication as much as possible.

In addition to the fact gathering process it is our job also to monitor, on behalf of the child, the progress of the case through the court system. We try to make sure that all of these deadlines are in compliance. If there needs to be a relative search, because we need to place the child with a relative, we need to make sure that has been adequately done. So in some cases we are doing the work ourselves. We are the watchdog over other people, pushing people to do their jobs because we all have very high case loads and we are all sort of a check and balance and a little bit "who is going to be the squeaky wheel".

So we try be the squeaky wheel when we need to be to make sure that all the other rules are being complied with. At every stage of the proceeding we are an advocate for the best interest of the child. And that means that at all of these meetings that other people are going to the guardian ad litem also has a right to be there and usually is. At every court appearance the guardian ad litem is there and the guardian ad litem's job is to be an advocate.

We don't always agree with, we are not always aligned with, the OCS social worker. And our most frequent disagreements, frankly, are "you are not doing enough". Because we are interested in what is best for the child at every stage of the proceeding, not what is best for the parent. We are strictly looking at what is best for the child, which is not always what is best for the parent.

We will not only watchdog the other parties and the agencies in the case, we will also watchdog the parents. We want to make sure that the parents are complying with their part of the service agreement or their part of the case plan or family plan. We are making sure the parents are getting their visitation, exercising it, if there are problems, if we can help to facilitate that.

Sometimes because of the nature of what is going on, if you think about a parent who has had a child taken away by a social worker then is asked to cooperate with that social worker, doing the things that they need to do to get that child back is a difficult role to put the parent into. Especially if they have educational deficits, mental deficits, substance abuse problems, those sorts of things. So having a neutral party that you can come to and say act as the liaison between you and the entity that is identified as having taken your child away from you, is sometimes a very useful thing to have occur. So we play that role as well.

We also frequently will observe visits, but, most importantly, we are watching the child. How is the child reacting to the process? We get so wrapped up in what happens in the courtroom that we sometimes forget that these children are living lives in foster care. They have family and friends and different things are changing in their lives and may or may not be in counseling on their own and we are constantly sort of taking the temperature of what is happening within that child's life. How is the child reacting and these decisions that are made without the child being there are affecting this child. So we are constantly monitoring how those things are affecting the child and making recommendations and frequently raising flags.

The next thing that we do is when we come to court the judges have to be the Solomon in the case and judges can't make decisions on bad information. It is our job as guardian ad litem to

independently gather and assess this information and to make recommendations to the judge as to what is in the best interest of the child. Judges are human they can only make a good decision if they have good information.

Judges by and large perceive the guardian ad litem in these cases as the only truly independent voice with no hidden agenda other than what is best for this child. So frequently we find that judges rely very heavily on our input and the judges want to know from us that our fact gathering is good. So the kinds of questions that we get from the judges tend to test us to make sure that we have had adequate contact with the child throughout the case, adequate contact with the school, with the care providers and that sort of thing to make sure that when we tell them something that is going on, they can trust us, because our recommendations boil down to our credibility and trust.

Judges tend to trust us because we are qualified, what does that mean? What does it mean to be qualified to be a guardian ad litem? A guardian ad litem ought to possess knowledge, skill, experience, training or education that allows that guardian ad litem to conduct the investigation, to make the recommendation. We have three guardians ad litem on our staff here in the Fairbanks office. The most experienced guardian ad litem has been doing this for a lot longer than our agency was in existence. She used to be the juvenile intake officer for delinquency cases at the courthouse and with that background has been doing this for 25 years or more. We have a licensed clinician on our staff working as a guardian ad litem. We have an attorney on our staff that has years of experience doing this working as guardian ad litem here in Fairbanks.

It is also our job to make sure that we are informed about all of the other services that are available in town, so that if somebody misses something we can make a referral to another agency or another service provider.

We are constantly receiving training and we have each year in the spring, we have a training conference that goes on for two days. It is the guardians ad litem and the Court Appointed Special Advocates (CASA) volunteers who work under the supervision of guardians ad litem who gather for a two-day training in Anchorage. I am very hopefully that the program will continue.

We are also in the process statewide of recruiting, it is important to have community feedback people familiar with local communities, who are involved in these cases as well. It is very difficult from Fairbanks or from Anchorage to sort out the pulse of what is going in within some of the smaller communities. Because of that, we are in the process of developing a process to recruit local guardians ad litem in communities and get them adequately trained and supervised so that they can provide services at the location where they are needed.





I am really grateful to be here and talk to you a little bit about mediation and how it is being used in CINA cases. I would like to first start out with a little history of the Alaska Court system mediation model and then tell you what mediation is and what family group conferencing is and then explain a little bit about why we mediate and then maybe a little bit about my job. I am a private mediator and my business is called Jane Parrish, Mediation Services, not meditation services -- maybe meditation would sometimes be appropriate.

I have been mediating these CINA cases for about the last year and a half, as well as custody cases through the court system through a court contract. My private practice is centered on family mediation, divorce, custody issues, as well as, small claims and workplace disputes.

I will give you some history on the Alaska Court system model. There is now presently in place a statewide mediation and family group conference project that is funded by federal dollars through grants. The program is now in its fourth year. The idea of using mediation in CINA cases on a voluntary basis came about as a result of a recommendation of the Alaska Judicial Council after they reviewed the child protection system to see how it could work better. Broadbased support of the program evolved over a two to three year period through the work of the Court Improvement Project and the ICWA and mediation subcommittees.

This work involved key players and department heads in development of this program. Becky Snow, who is retired from the Attorney General's Office and is from Fairbanks, deserves a lot of credit and recognition for her hand in helping to shape the program into what it is today. Karen Largent and Susan DiPietro, both of the Anchorage Court System, were key in getting the program up and running. It quickly expanded from an Anchorage pilot program to an ongoing program throughout the rest of the state including more remote areas like Nome, Bethel, Dillingham, Glenallen and some bush areas as well.

It is intended that services will continue to the outlying areas as funding permits. Karen is in the Anchorage audience and she is the State Court's Dispute Resolution Coordinator and works out of the Anchorage office. She has coordinated specialized trainings for professional mediators statewide. Mediators who have been trained for the CINA cases and the family group conferencing are private contractors. They have been approved through a process to be the mediators in these cases. She also coordinated statewide trainings for stakeholders as well and these stakeholders would be people that you have heard from today from OCS, AG's office, public defenders, OPA, and others as well. So this statewide training has helped the program to become more accessible to everyone and for people to learn how they can use the mediation services.

What is mediation? Mediation is a process where people voluntarily get together to talk about their differences and to try to reach agreement on those differences. The mediator helps to focus participants on the issues in coming to an agreement. The mediator is a neutral person, does not make decisions, does not take sides and does not decide who is right or wrong. A mediator could be described as a facilitator of discussion and a mediator is there to help all parties. And this is especially important: to be open and to understand the other party's viewpoint.

Some of the underlying principles of mediation are: it is a voluntary process. The parties are the stakeholders and they are there to make decisions for themselves. It is a confidential process. The parties are asked to sign confidentiality agreements. What is talked about in mediation cannot be used at trial. This helps to make mediation a safe place where people can discuss various issues. Every party involved has a chance to speak and be heard. It is a collaborative process; a cooperative process designed so that the agreements the parties come up with will be agreements they all can live with. The agreements may not be what they wanted when they came into mediation, but through the process will be agreements that will work well for them. It is a creative process and many times clients have brainstormed and come up with solutions that are very different than what they could have thought of by themselves. Because of the nature of mediation and the fact that parties are the decision makers, the agreements are more likely to be followed; in other words the parties honor their agreements.

Family group conferencing was added to the program in the past year. This is similar to mediation but it differs in that the mediator becomes more of a facilitator and primarily works with the family and the social worker, although others are definitely involved as well. It is much more child and family centered. In a family group conference, the underlying philosophy is that child protection is a shared responsibility among governmental agencies, tribes, community, and, most importantly, families. Underlying principles are that it is child centered, family focused, and strengths based. What that means is that the child's needs are first and foremost and decisions are made around those needs, while the services to the family are there to help the family rebuild and be better able to care for and protect the child. Strengths based means that the light is shined upon what families are doing well, what the families' strengths are.

A distinguishing feature of the family group conference is that in the conference itself the family determines who the family is and who will be involved. They have an opportunity to meet privately to create a plan. They create this plan around the parameters that have been given to them by the social worker. This process is respectful of the family and the ability of the family to make good decisions for themselves and their children. The model was developed in New Zealand and became mandatory in child abuse and neglect cases there. It was designed to be consistent with the historical family decision making practices of the indigenous Maori people and to provide blood-related family members with an opportunity to make their own decisions about the safety of their own children. This model is well suited for Alaska native families as well in terms of their life style and their traditional ways of decision-making and their set of values. Fifty percent of the mediated CINA cases are ICWA and involve native families.

So why do we mediate these CINA cases? The goal of including mediation and/or family group conferencing as a tool for the parties is truly to engage families in the decision making process. The process is non-adversarial and cooperative. This in turn translates into increased wellbeing of the children in terms of permanency. When families are included in the decision making process and allowed to help create the agreements, they are more likely to hold to and follow-

through on those agreements. Parents have to be a part of the solution, and they must be engaged and this is an effective way to do that. There are other reasons as well, and you have heard today from a number of people talking about conflict. There is a lot of conflict from the get-go in these cases just because of the way our society is and the values that we hold in this society. Two values that come into direct conflict are the value held by our society to protect children vs. that of parental rights – the right of parents to raise their children. The state's child protection system is set up around values that create a lot of conflict and they clash.

Another factor that causes conflict is under-funding of the system and caseworker overload. Still more conflict occurs when participants find themselves in an involuntary court process which is adversarial, competitive and not conducive to engaging families in decision making and we have winners and losers. Don't mistake what I am saying here, the whole (court or legal) process has its place and the people in that process are very caring people, but because of the way it is set up, it is a hard system for families to be in.

So, that is why we mediate. Mediation offers a time out, if you will, from an adversarial process. It offers us the opportunity to sit down and talk to one another. Parties can share information; they clear up assumptions that have been made, identify issues. They can come to agreement if they choose. As I said, it is voluntary. Once the parties are there, they have met the spirit of the court order, -- that gets them there – and from there on out, parties can leave at anytime -- including the mediator. Mediation is not going to change the system and it is not the only answer. But it is a tool that can be used, and it can change the nature of the interaction between the participants just a little bit – which can make a big difference.

Mediators can help parties work together and align themselves to focus on the goal of keeping the best interests of the children in the forefront and begin problem solving together. As a result of working together the greatest satisfaction will occur, and hopefully there will be less alienation. The agreements that are reached will mean less time in court.

I have a few statistics for you. Two hundred and ninety-four cases have been referred to the program and forty-six of those are from Fairbanks. I don't have the figures from Anchorage or Juneau. What has consistently been found is that in 85% of the cases mediated agreements on some or all of the issues have resulted. Increased referrals have begun and utilization of the program throughout the state is a strong indicator(s) of success. Satisfaction surveys are handed out to all the participants after mediation or a family group conference. Those forms have come back with an indication of strong satisfaction. But as with any grant-funded program, funding is always a challenge and is the same for this program. Originally it was funded through two federal grants. Now one federal grant is in place. A two-year grant just expired. I brought some brochures with me that you are welcome to take and if there are any questions or you want further information, Karen Largent, the Dispute Resolution Coordinator in Anchorage, would be happy to help you with that information. You can always contact me, too. I would be happy to help out in any way.

People this morning have been talking about all the participants in the CINA cases, and they are all listed on the charts (on the wall), and I just wanted to say that most of my job as mediator – or half of it anyway – is done before I get to mediation. I start out by contacting all the parties and then because I don't really know who should be called into mediation until I get through interviewing all the parties, spend a lot of time on the phone, getting messages from the parties –

some of them are folks who have spoken here today – who are under some real time constraints. But I do try to interview everybody before we get to mediation because I want to know what issues they want to bring to the table. I want to help them understand other's viewpoints if that is a concern. I want to know whom they are comfortable with; whom they are not comfortable with so the mediation can be productive.

The most noticeable change I've seen over the last year as a result of the mediation program is the difference in behaviors of participants: the way they interact with one another. There is much more respect and that is key in building trust. This is especially important with the professionals, because their perception of what is going on in the case can directly influence their clients. There's a consistency of professional participants, except for social workers. There's such a high turnover and the change is not as great.

I think it's hard for families/participants to go from a court process to mediation and then back again. It's confusing. People can and do adapt to different processes, but is it the best environment in which to be making decisions regarding families and their children? Maybe we should look at different forums where the environment is not so adversarial and is more family focused.

Muriel Kronowitz, Anchorage Family Care Court



Photo taken by Jim Lavrakas Anchorage Daily News

The Family CARE Court (FCC) was launched in September of 2002 in an effort to break the cycle of addiction and child abuse and neglect and provide intensive judicial support and case management with treatment for parents and their children that will help them lead healthy productive lives. September 2003 marked a one-year milestone with five participants graduating from the program. They are called the pioneer participants.

As many of you know, the therapeutic court movement has been growing over the past ten years as we all search for new approached to address the serious alcohol and drug problems in our own State and across the nation.

The FCC is an outgrowth of this effort. The end game, if you will, of FCC is to unify children with their parents who have achieved ongoing sobriety and are capable of providing stable, safe homes for their children.

The lynch pin of these therapeutic courts is the collaborative process among the many systems that are involved when a child is removed from the home because of neglect or abuse. If the removal is directly linked to the parent's alcohol or drug problem and a CINA case is opened, it may be a case where the parents would benefit from entering the FCC.

Entry into the court is voluntary. The FCC team meets weekly and discusses ongoing cases and any referrals presented by the team social worker. All referrals are reviewed by the OCS team Social Worker and her supervisor prior to being reviewed by the FCC team. The goal is to get eligible parents into the court as quickly as possible and wrap a team around the family for 15-18 months. The team discusses the case when all the collateral information has been gathered and a decision with regard to entry into FCC is made. It is really the intent of FCC to capture these cases early on in the child protective system to maximize interventions.

Once parents (primarily women) are accepted into the FCC, weekly status reports from the treatment providers are submitted to the FCC team. They are reviewed and issues are addressed. Sometimes it is kudos to parents from the judge, sometimes it is admonishment and sanctions, and sometimes it is both. This team collaboration is very much holistic in nature. It looks at the whole person or family in terms of their current and future needs to be successful.

The team consists of a judge, public defender, Assistant Attorney General, Guardian Ad Litem, social worker, an attorney, and a coordinator. The FCC works collaboratively with many substance abuse and mental providers in order to facilitate timely and appropriate services.

I would like to digress a moment and highlight and underscore what Judge Steinkruger and some others have been talking about this morning. Entry into treatment has become increasingly difficult for this population. There are long waiting lists and there are a scarce number of treatment facilities that really provide services for women and their children. One of the goals of the court is timely access to services. Getting children out of foster care and reuniting them with their parents while they are in FCC is vital for the parents and FCC. Their involvement in the

FCC provides a safety net, if you will, for the family as it monitors, supports and responds to the needs of the family. One of the unique aspects of the FCC is that the participants meet weekly away from the court and participate in a support group that is facilitated by a volunteer coordinator. They meet for the life of the time they are in FCC.

Because the court believes we need to look at the whole person, I really need to talk a moment about meeting the mental health needs of the participants. This is really crucial. These women have experienced sexual abuse, physical abuse, incidents of domestic violence, unemployment, homelessness, and compound grief. Additionally, there may be questions about their cognitive functioning as a result of their own mothers' maternal drinking history during pregnancy that usually goes unaddressed. Others here have talked about this also. We suspect some of the adults we are seeing in FCC have undiagnosed FASD.

If the mental health needs of substance abusers do not get addressed in concert with their alcohol and substance abuse problems, none of us should be surprised if they return to using drugs and alcohol again. Everything is connected to everything else with the children as the benefactors when their parents grow healthy. Substance abuse is connected to mental health, is connected to available housing, is connected to viable employment, is connected to future generations of healthy children; it is a big circle.

FCC and therapeutic courts are really a new way of doing business that challenges the systems, the participants and the community. I would like to extend an invitation to all of you, and especially when you are in Anchorage to come to the FCC. We meet on Tuesday afternoons at 3:00 p.m. in Nesbitt Courthouse, courtroom 403. See what the process is really all about.

Before I end, I would like to share some initial aggregate data for our first year. We have a total of twelve cases in the FCC. Five of them have graduated with five children reunited with four families. We had four females and one male graduating. The male was the partner of a female graduate and they were both in court at the same time. He was away fishing some of the time and he would call into court every single week monitoring him with drug testing. Of the parents who have graduated, they: successfully completed residential and outpatient treatment, were in independent living situations and at Oxford House, three employed, and all had nine months to a year or more of sobriety. One of the graduates has moved into her second year of sobriety, so we are talking long-term sustained sobriety. One of the five graduates was just accepted into Job Corps, which means she is on a pass. She has her children with her and will be in Job Corps for the next six months.

Referrals keep coming in. We have some parents on the referral list waiting for the process to move forward. We would welcome phone calls and an opportunity to talk more about the FCC.

Ethan Schutt, Tanana Chiefs Conference



There are a number of children in the State's child protection system and the participation of the tribes and representatives of those tribes is an extremely important part of this process in the whole system. Tanana Chiefs Conference's (TCC) job is to represent the tribe and to enforce the rights of the tribe under Federal law and to the degree that we can be collaborative and beneficial to the process we do that. But if there are mistakes or problems and it turns into an obstruction, you shouldn't blame it on the tribe or the tribal attorney.

TCC's job is to insure that tribes receive notice and receive timely notice and once the tribe is noticed to make sure that it is represented as a full participating party throughout the proceedings. Sometimes tribes intervene in proceedings but there is not follow-through and the tribe is not treated as a party. At some point the preferences come in with foster care, adoption preferences, and I would like to point out again that those preferences are not that different from state law. In fact, the preferences protect and enhance the rights of any non-native extended family as they do the native family. So this process actually applies to the whole extended family and provides them with additional protection and rights.

Full and whole participation by the tribe, involving the tribe early in the proceeding by communication, really enhances the process when it involves an Indian child. It does that because it takes the roadblocks out of the procedures that are set up by federal and state law. The tribal representative or tribal attorney can really help bridge some of these acknowledged cultural and geographic separations that there are.

The following is a list of things that a tribal representative and tribal attorneys can help you work through in these ICWA and CINA cases. We can help find missing parents; we can certainly help find and notify tribes. We can greatly facilitate that process and can help find relatives on both sides of the family. We can facilitate services and leverage additional services that are provided through the regional non-profit native corporations. Some of the tribes that are larger and more sophisticated have additional services that are also available at the tribal level to supplement the state-provided services. We can facilitate visitation. We can definitely help with attorney relations. We can work through case plans and help get buy-in by the tribe and the parents. Among this list and all the subsequent steps TCC and the other regional non-profits, along with other the tribal representatives or attorneys, can certainly help facilitate the entire ICWA/CINA process.

Let me give you a few brief facts and statistics on the tribal court system as it relates to ICWA and CINA cases. In the TCC region, we know there are approximately 138 kids in tribal custody, and we don't even represent all the tribes in our region, so the number is greater than that. Without the tribal court system these kids would all be in the state system. Many of them are rural and the rural factor adds additional cost and effort. There are approximately 80 - 90 new cases per year filed in the Interior in the TCC region. Again that number is actually higher because we don't provide this service to some of our tribes, they do it on their own.

Our internal statistics indicate that generally the length of time spent in the tribal foster placement or protective custody of the tribe is shorter than for corresponding cases in the state system. Permanent placements are also generally faster when processed through the tribal court system. A number of our tribes are very pro-active in getting involved in cases where they can see problems emerging with parents particularly in a case where a parent has been in the system before. I think the tribes are also more responsive because they are local. They can see problems going on, where the State's services are predominantly provided out of regional hubs like Fairbanks.

Finally on the issue on whether or not a child is an Indian child or if there is a question on where to send notice, if there is an indication that the child may be from the Interior, enrolled, or eligible for enrollment with an Interior tribe, I would encourage everyone involved to send notice to the suspected tribe or to send it to TCC early. We can help facilitate that process, and I am sure the other non-profits when they have an ICWA attorney or an ICWA department would appreciate receiving those notices. It would help to get the tribe in early, identify the tribe that is appropriate, and get the buy-in to move these cases along.

General Questions and Answers

There was something said about a child being in a courtroom. When can a child be in the courtroom? I have never known them to be allowed to be there?

<u>Judge Steinkruger</u>: There are those sometimes. It is more than likely an older child. We find that it is not useful for toddlers. But we have situations, more often a junior high or high school child. I see them most often in a runaway situation where they come to court, they are brought in and come to court and we are going to talk about what really happens in a runaway situation. There are some instances where a therapist thinks it is a good time for a child to come to court and see who these people are that are making all these decisions. I would say in Fairbanks the judges tend to be very protective about having children come in to face-off with their parents. So there is kind of an effort there to decide when it is appropriate and when not.

We had a presentation two days ago where a situation was brought up that there is a complaint of harm and the investigation will stop in its track until it can check with a tribe? That is some sort of change in the investigative manual. Can someone speak to that?

Rayna Hamm: I am not familiar with that. I do know that if we know who the tribe is we certainly try to notify the tribe before we go out to do an investigation that we are coming to their village. I am actually looking to the Attorneys General to see if there is something I might have missed – they are shaking their heads no. I am not sure what that is, I am not aware of investigations stopping in their tracks, unless the tribe itself has custody of the child.

<u>Representative Coghill</u> stated that if there is a situation like that, if it is possible, find out who is making that recommendation and take it to the division director, which would be the first place he would go with it. But at this point there does not seem to be any knowledge of that.

Final Comments by Judge Steinkruger

Just a couple of comments in wrapping up. I think it is important for people to remember these are not criminal cases. Parents feel like defendants because they are being accused of serious things. I think that is exactly how they feel and I think that it is perfectly understandable, but these are not criminal cases. This is not about them going to jail. There are more people involved. In a criminal case there is them, the state, and jail. These cases are much more complicated than that. There is the parent, the other parent, the child, and often the tribe. There are many more different policy issues here than in a criminal case.

The second thing is we have talked a lot here about the process. I just really appreciated what Ethan said, which is one of the things we have not dwelled on yet, there are hundreds of children in Alaska who are in foster care under state tribal orders and were it not for those orders, many of those children would be in the state system and frankly we could not handle them. So the tribal courts and what is happening with the tribes is extremely important in addition to all the policy reasons that they should be handled that way.

And finally, I go back to where I started, which is that the only way this system can work for families is if we have services available to them. In order for it to work for the state the challenge is there have to be services available in the front end for the parent and for the child. If we have a sexually abused child, they need a mental health appointment to talk to someone regardless of whether that is being prosecuted in the criminal system. That child needs access to mental health services and their siblings frequently need access. So this service is for parents and children. We need support to those parents and we need a commitment by the parents. I think the people that have talked here today, the attorneys in particular, have told you about this third one, which is what they are working on. In addition to representing what the parent wants, we need to get the parents engaged and committed to the services and getting their children back.

All the lawyers in this room have heard me say to parents over and over, the State of Alaska does not want to raise your children. We want you to take your children back and raise them and so we have a system with some difficulty that is trying to operate to provide for that.

Thank you for your time everyone.

Representative Coghill's Final Comments



Being on the Health and Social Services Committee for six years, I can tell you we have debated on how to define some of these things in laws when there are huge judgment calls that are necessary at many levels. One of the reasons for bringing you all together here today was so that legislative staff could see a snapshot of the system.

The children of Alaska are being served. There is no doubt in my mind about that. The civil and criminal law issue, to me, we have blurred some and there is always a discussion on that. Certainly the legislative issue is how do we make the distinction clearer.

But practically speaking, whether we are working with an individual family or multiple families in this legal system, hats off to everybody here who has put the work into it. I know it always doesn't pay as well as it should and there are always shortages and we are going to deal with resource issues. I can tell you, in the legislature we are going to deal with resource issues.

So, staff thank you very much for coming in Juneau and Anchorage and all of those who are involved in the system its time to go back to work. Thank you and God Bless.

APPENDIX

Family Rights Landmark Cases

Alaska Supreme Court CINA Cases Schedules:

J.H. v. State, Dept. of Family & Youth Services / D.H. v. State, Dept. of Family & Youth Services, (02/10/05) S-10905 / S-10944

Alaska Supreme Court Case Law:

Silvan v. Alcina, (01/14/05) sp-5858, (custody-trial judge in best position; reorientation alimony; custody appeal must be filed in 15 days; the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent)

Moeller-Prokosch v. Prokosch, (10/01/04) sp-5834, 99 P3d 531; (custody when a parent moves out-of-state)

Carl N. v. State, DFYS, (12/10/04) sp-5852, (termination of parental rights in best interest of the nine-year-old child because treatment of father's bipolar condition would delay reunification for two years)

Stanley B. v. State, **DFYS** (06/04/2004) sp-5811, (incarceration as grounds for CINA termination) <u>WITHDRAWN</u>

Evans v. McTaggart (04/09/2004) sp-5794, 88 P3d 1078 (2004 Alaska); (grandparent custody/visitation requires clear and convincing evidence)

Stanley B. v. State, DFYS (04/09/2004) sp-5793 (incarceration as grounds for CINA/termination) WITHDRAWN: See Slip Opinion 5811.

Brynna B. v. State, Dept. of Health & Social Services (03/19/2004) sp-5788, 88 P3d 527 (2004 Alaska); (disregard placement of child with blood relative)

In the Matter of the Adoption of Keith M.W. (10/31/2003) sp-5748, 79 P3d 623 (2003 Alaska); (consent to direct placement adoption under ICWA)

Vivian P. v State (10/16/2003) sp-5744, 78 P.3d 715, (2003 Alaska); (reasonable reunite effort not required when circumstances pose a substantial risk to child's health or safety)

Frank E. v State (09/26/2003) sp-5741, 77 P.3d 715 (2003 Alaska) (long prison term-terminate parental rights)

- *Martin N. v. State, Dept. of Health and Social Services* (09/12/2003) sp-5736, 79 P.3d 50 (2003 Alaska) (four findings required for parental rights termination; witnessing violence is mentally harmful to small children)
- *In the Matter of the Adoption of Bernard A.* (09/12/2003) sp-5735, 77 P3d 4 (2003 Alaska); (extended family preference under ICWA; continuity of caregiving for foster children)
- Sherry R. v. State, Dept. of Health & Social Services (08/01/2003) sp-5721, 74 P3d 896 (2003 Alaska); (termination of parental rights)
- Adoption of L.E.K.M. (05/30/2003) sp-5695, 70 P3d 1097 (2003 Alaska); (no relative-placement preference in adoptions)
- Jack C. v. State, Division of Family and Youth Services (05/02/2003) sp-5686, 68 P3d 1274 (2003 Alaska); (termination of parental rights)
- G.C. v. State, Dept. of Health & Social Services (04/11/2003) sp-5678, 67 P3d 648 (2003 Alaska); (abandonment of child based on incarceration)
- *Erica A. v. State, Dept. of Health & Social Services* (03/21/2003) sp-5674, 66 P3d 1 (2003 Alaska); (termination of parental rights; power of attorney cannot assign custody)
- Evans v. Native Village of Selawik IRA Council (02/28/2003) sp-5669, 65 P3d 58 (2003 Alaska); (due process required to terminate parental rights)
- A.J. v. State, Dept. of Health & Social Services (01/17/2003) sp-5656, 62 P3d 609 (2003 Alaska); (terminating parental rights under ICWA)
- *M.L.L. v. State, Dept. of Health and Social Services* (12/31/2002) sp-5654, 61 P3d 438 (2003 Alaska); (higher burden of proof in ICWA termination cases)
- **S.B.** v. State, Dept. of Health and Social Services (12/27/2002) sp-5653, 61 P3d 6 (2003 Alaska); (jurisdiction in UCCJEA case; nonparent's right to exercise legal custody)
- *Atkins v. Vigil* (11/22/2002) sp-5645, 59 P3d 255 (2003 Alaska); (child's "home state" under the UCCJEA)
- **J.A. v.** Alaska DFYS (07/05/2002) sp-5592, 50 P3d 395 (2003 Alaska); (use of expert testimony in ICWA termination cases)
- *J.S. v. State* (06/21/2002) sp-5590, 50 P3d 388 (2003 Alaska); (no ICWA remedial plan or placement preference required in cases of sexual abuse)
- *Kelly v. Joseph* (05/10/2002) sp-5570, 50 P3d 388 (2003 Alaska); (custody, changed circumstances vs. best interests)
- *E.A. v. State, Div. of Family and Youth Services* (05/10/2002) sp-5564, 46 P3d 986 (2003 Alaska); (terminating parental rights under ICWA)

- **R.G.** v. State, Dept. of Health & Social Services (03/15/2002) sp-5552, 43 P.3d 145 (2002 Alaska(; (mental illness, basis for termination of parent rights)
- S.H. v. State, Dept. of Health & Social Services (03/08/2002) sp-5544, 42 P.3d 10093 (2002 Alaska); (termination of parental rights)
- *V.S.B. v. State* (02/15/2002) sp-5537, 45 P.3d 1198 (2002 Alaska); (Compliance with treatment plan not conclusive)
- *M.J.S. v. State, Dept. of Health and Social Services* (01/25/2002) sp-5527, 39 P.3d 1123 (2002 Alaska); (fail to participate in plan-abandonment; who qualifies as guardian)
- *J.J. v. State, Dept. of Health & Social Services* (12/24/2001) sp-5520, 38 P.3d 7 (2001 Alaska); (ICWA; past addictive behavior not controlling)
- *V.S.B. v. State, Dept. of Health & Social Services* (12/21/2001) sp-5517, (CINA must precede termination; use of treatment plan) WITHDRAWN: See Op #5537
- Ogden v. Ogden (12/14/2001) sp-5516, 39 P3d 513 (2001 Alaska); (disqualifying child custody investigator)
- *Goliver v McAllister* (11/02/2001) sp-5497, 34 P.3d 324 (2001 Alaska); (one-year limit to set aside adoption)
- **J.L.P.** v V.L.A. (09/14/2001) sp-5470, 30 P.3d 590 (2001 Alaska); (two-step procedure for motion to modify custody)
- *J.H.* v State Dept of Health & Social Services (08/31/2001) sp-5462, 30 P.3d 79 (2001 Alaska); (step-by-step procedure to terminate parental rights)
- **John v Baker** (08/31/2001) sp-5460, 30 P3d 68 (2001 Alaska); (tribal court family law jurisdiction)
- *In The Matter of: C.R.H.* (08/31/2001) sp-5458, 29 P.3d 849 (2001 Alaska); (transfer of Indian custody cases to tribal court)
- **D.D.** v L.A.H. (08/10/2001) sp-5447, 27 P.3d 757 (2001 Alaska); (hearing and findings required to change custody; appointment of custody investigator discretionary)
- *T.F. v. State, Dept. of Health and Social Services* (07/20/2001) sp-5437, 26 P.3d 1089 (2001 Alaska); (terminate parental rights in ICWA case)
- *E. H. v State Dept of Health and Social Services* (06/08/2001) sp-5419, 23 P.3d 1186 (2001 Alaska); (Alaska residency following absence from state)
- C.W. v. State Dept of Health and Social Services (05/25/2001) sp-5415, 23 P.3d 52 (2001 Alaska); (abandonment of child as grounds for termination)

- M.W. v. Alaska Department of Health & Social Services (04/20/2001) sp-5391, 20 P.3d 1141 (2001 Alaska); (terminate parental rights; abandon-reappear)
- *N.A. v. State* (03/23/2001) sp-5374, 19 P.3d 597 (2001 Alaska); (ICWA: active efforts to reunite)
- C.J. v. State, Dept. of Health & Social Services (03/16/2001) sp-5372, 18 P.3d 1214 (2001 Alaska); (Terminate parental rights in ICWA case)
- **B.B.** v. **D.D.** (03/09/2001) sp-5371, 18 P.3d 1210 (2001 Alaska); (Modify requires change of circumstances)
- *Platz v. Aramburo* (02/16/2001) sp-5362, 17 P.3d 65 (2001 Alaska); (Best interests hearing required for custody change.)
- *C.L. v. P.C.S.* (02/12/2001) sp-5360, 17 P.3d 769 (2001 Alaska); (ICWA placement guidelines; good cause to deviate.)
- In the Matter of the Adoption of A.F.M. v. D.M. (01/05/2001) sp-5355, 15 P.3d 258 (2001 Alaska); (Sexual assault, consent to adopt not required.)
- *J.M.R. v. S.T.R.* (01/05/2001) sp-5354, 15 P.3d 253 (2001 Alaska); (Domestic violence petition not appropriate to litigate custody; grounds for non-parent custody.)
- *L.G. v. State; Dept of Health & Social Services* (12/15/2000) sp-5349, 14 P.3d 946 (2000 Alaska); (Terminate parental rights under ICWA.)
- **R.M. v. S.G.** (12/08/2000) sp-5340 (Custody investigator is "expert" under Rule 26.)
- A.H. v. State, Dept of Health & Social Services (10/20/2000) sp-5324, 10 P.3d 1156 (2000 Alaska); (Termination of parental rights)
- Jenkins v. Handel (10/13/2000) sp-5321,10 P.3d 586 (2000 Alaska); (Child's custody preference; GAL's obligation)
- **A.B. v. State; Dept. of Health & Social Services** (09/08/2000) sp-5312, 7 P.3d 946 (2000 Alaska); (Two grounds for terminating parental rights)
- **R.I.** v C.C. (08/18/2000) sp-5308, 9 P.3d 274 (2000 Alaska); (Custody based on factors in AS 25.24.150(c))
- *State, Dept of Revenue, CSED v. Maxwell* (08/18/2000) sp-5306, 6 P.3d 733 (2000 Alaska); (Disestablish paternity; relief from support order)
- **S.S.M** v. **State** (06/16/2000) sp-5285, 3 P.3d 342 (2000 Alaska); (CINA case, relative has placement preference)

A.H. v. P.B. (05/26/2000) sp-5278, 2 P.3d 627 (2000 Alaska); (Hearing required before material visit change)

Moore v. Allstate Insurance Company (01/21/2000) sp-5232, 995 P. 2d 231 (2000 Alaska); (Jurisdiction, concurrent or exclusive)

D.M. v. State, Div. Of Family & Youth Services (01/14/2000) sp-5230, 995 P.2d 205 (2000 Alaska); (Terminate parental rights, two step process)

V.D. v. State, Dept. of Health and Social Services (11/12/1999) sp-5206, 991 P.2d 214 (1999 Alaska); (CINA case, appointment of counsel)

John v. Baker (09/08/1999) sp-5174, 982 P.2d 738 (1999 Alaska); (Tribal jurisdiction over child custody)

A.A. v. State of Alaska, Dept. of Family & Youth Services (06/25/1999) sp-5137, 982 P.2d 256 (1999 Alaska); (ICWA, "active remedial efforts")

T.P.D. v. A.C.D., and Alaska Dept. of Revenue, CSED (05/28/1999) sp-5127, 981 P2d 116 (Paternity by estoppel; laches)

B.E.B. v. **R.L.B.** (05/14/1999) sp-5114, 979 P2d 514 (paternity by estoppel)

O.R. v. Alaska Dep't. of Health and Social Services (11/27/1998) sp-5046, 968 P2d 93 (CINA, abandonment vs. physical abuse)

In the Matter of J.A. (08/07/1998) sp-5019, 962 P2d 173 (probable cause in CINA case)

I.J.D. v. D.R.D. (07/31/1998) sp-5013, 961 P2d 425 (no rule favoring primary caregiver or against dividing siblings; findings needed for limited visit order)

Adoption of A.F.M. (06/26/1998) sp-5005, 960 P2d 602 (adoption: visits after and waiver of consent)

E.M. v. Alaska Division of Family and Youth Services (05/29/1998) sp-4994, 959 P2d 766 (termination of parental rights in ICWA case)

C.R.B. v. C.C. (05/29/1998) sp-4993, 959 P2d 375 (modify custody against nonparents)

D.K. v. Alaska Dep't. of Health & Social Services (04/17/1998) sp-4970, 956 P2d 477 (abandonment of child)

J.W. v. R.J. (01/16/1998) sp-4934, 951 P2d 1206 (custody between parent and non-parent)

C.T. v. J.S. & C. B. (01/16/1998) sp-4931, 951 P2d 1199 (adoption requires parent consent)

Hernandez v. Lambert (01/02/1998) sp-4928, 951 P2d 436 (1 year to challenge adoption)

B.J. v. J.D. (12/19/1997) sp-4921, 950 P2d 113 (UCCJA; custody to step-parent)

R.J.M. v. Alaska Department of Health and Social Services (09/19/1997) sp-4887, 946 P2d 855 (CINA case, unwilling vs unable to care)

A.M. v. Alaska (09/12/1997) sp-4886, 945 P2d 296 (terminate parental rights, standard of review)

Borchgrevink v. Borchgrevink (06/27/1997) sp-4842, 941 P2d 132 (child custody, physical abuse)

O.R. v. **Dep't. of Health and Social Services** (01/31/1997) sp-4471, 932 P2d 1303 (CINA case)

D.H. v. State (12/20/1996) sp-4446, 929 P2d 650 (CINA, three specific findings required)

J.F.E. v. J.A.S. (12/13/1996) sp-4445, 930 P2d 409 (supervised visitation)

R.F. v. S.S. and J.S. (12/06/1996) sp-4442, 928 P2d 1194 (Termination of parental rights when H murders W)

T.B. v. State (09/06/1996) sp-4400, 922 P2d 271 (CINA, evidence must be "substantial")

F.T. v. Div. of Family & Youth Services (09/06/1996) sp-4399, 922 P2d 277 (CINA, unwilling to accept parent's care)

M.B. v. Alaska (08/09/1996) sp-4383, 922 P2d 878 (paternity presumption; blood tests)

In the Matter of J.W., W.W.., and J.P.W. (07/19/1996) sp-4370, 921 P2d 604 (CINA, alcoholic vs. substance abuse)

R.R. v. State (06/21/1996) sp-4359, 919 P2d 754 (CINA case, unable vs. unwilling to care)

Matter of J.L.F and K.W.F. (03/15/1996) sp-4327, 912 P2d 1255 (CINA, unable vs. unwilling to care; relatives willing to provide care; withholding consent to adopt)

In the Matter of N. A. (01/26/1996) sp-4314, 912 P2d 1235 (CINA case, unable vs. unwilling to care)

Child Support Enforcement Agencey v. Alsop & Castleman (09/08/1995) sp-4252, 902 P2d 790 (presumption/disestablishing paternity)

K.E. v. J. W. (07/14/1995) sp-4228, 899 P2d 133 (estoppel to prevent denial of paternity)

A. H. v. W. P. (06/09/1995) sp-4222, 896 P2d 240 (parent's mental health as change of circumstance.)

A.M. V. State (03/10/1995) sp-4177, 891 P2d 815 (terminate parental rights-abandonment; parent in jail; ICWA 'remedial efforts' requirement)

In the Matter of T.W.R., J.P.M., and P.S.R. (12/23/1994) sp-4157, 887 P2d 941 (terminate parental rights; CINA Rule 15)

C.A.S., *P.K.S.* and *B.S.* v. *State of Alaska* (10/21/1994) sp-4138, 882 P2d 1266 (release of info in CINA case)

In the Matter of Adoption of J.M.F. (09/30/1994) sp-4128, 881 P2d 1116 (consent of natural parent; adoption)

Perry v. Madlock (04/08/1994) sp-4072, 871 P2d 1150 (effect of terminating parental rights)

In the Matter of D.D.S. (03/04/1994) sp-4058, 869 P2d 160 (alcohol record admissible in CINA)

Adoption of N.P.S. (02/18/1994) sp-4057, 868 P2d 934 (ICWA adoption preferences)

F.T. v. State of Alaska (11/05/1993) sp-4021, 862 P2d 857 (CINA prerequisites; best interests)

In the Matters of D.P., C.P., H.P. (11/05/1993) sp-4019, 861 P2d 1166 (visitation, child in DFYS custody)

T.M.C. v. S.A.C. (09/03/1993) sp-4001, 858 P2d 315 (sua sponte change of circumstances)

Rich v. Berry (08/06/1993) sp-3990, 857 P2d 341 (guardian ad litem in custody case)

K.N. v. State of Alaska (07/23/1993) sp-3980, 856 P2d 468 (termination of rights under ICWA) *R. Olson v. F. Olson* (07/23/1993) sp-3975, 856 P2d 482 (modify under Rule 60(b))

In the Matter of the Adoption of F.H. (05/14/1993) sp-3956, 851 P2d 1361 (ICWA placement/adoption preference)

In the Matter of R.K. and E.K. (04/30/1993) sp-3949, 851 P2d 62 (CINA, terminate parental rights)

H. Hakas v. W. Bergenthal (12/24/1992) sp-3907, 843 P2d 642 (best interest inquiry is essential)

In the Matter of F.P., W.M. and A.M. (12/18/1992) sp-3906, 843 P2d 1214 (ICWA, village custody jurisdiction)

Doe v. Hughes, Thorsness, Gantz, Powell & Brundin (10/09/1992) sp-3891, P11; 838,804d 833 (ICWA, adoption)

L.P. v. State of Alaska, in the Matter of T.P. (09/25/1992) sp-3889, 838 P2d 1236 (hearsay in CINA proceedings)

D.W. v. State of Alaska in the Matter of A.S.W. and E.W. (05/29/1992) sp-3847, 834 P2d 801 (sexual abuse; CHINA case)

C. Harvick v. D. Harvick (04/03/1992) sp-3828, 828 P2d 769 (modify custody, ICWA) *K. F. v. State & F. C.* (03/13/1992) sp-3820, 828 P2d 166 (terminate parental rights; CINA)

Other Case Law:

Doe v. DSS, 649 F.2d 134 (2d Cir., 1981)

In a landmark decision, the court established the Constitutional right of children in foster care to be free from harm and for children abused in foster case to sue both the City of New York and the foster care agency under 42 U.S.C. § 1983. A great expansion for children's rights, this decision has served as a precedent for all other circuits that have had similar cases.

Cruz v. Sullivan, 912 F.2d 8 (2d Cir., 1990)

The court, granted benefits to a claimant who was denied benefits at the administrative hearing level. This court decided that the administrative judge was not able to properly assess the claimant's disability, and thus he was eligible for Supplemental Security benefits. Willis v. Croft (settlement abstract)

Thomas v. City of New York, 814 F. Supp. 1139 (S.D.N.Y 1992.)

A mother and her children sued the City of New York, and Foster care agencies for children who were physically and emotionally harmed while in foster care. This court determined that the domestic relations exception in federal court did not apply in cases were children were abused while in the custody of the City of New York.

Matter of Alexander L.

New York's highest court held that parents who are in danger of losing their children and are ordered to submit to psychiatric examinations have the right to bring their attorney with them to the examination.

Valmonte v. Bane, 18 F. 3d 992 (2d Cir., 1994)

In a major expansion of the right to reputation, the court held that the operation of the Department of Social Services' State Central Register was unconstitutional. The Register is a list of all parents suspected of abusing or neglecting their children, and any person whose name is on the list is effectively banned from working with children. The court found the system to be unacceptable due to the low level of evidence required to place a name on the register and the lack of a hearing.

Tenenbaum v. Williams, 193 F. 3d 581 (2d Cir., 1999)

The court expanded the Fourth Amendment rights of children, holding that social workers could not have doctors conduct medical examinations on children without the consent of the parents or a court order, In addition, the court held that, if there is enough time for a caseworker to obtain a court order, the caseworker could not remove the children from their parents without one.

Nicholson v. Williams, 203 F. Supp.2d 153 (E.D. N.Y. 2002)

In a class-action lawsuit, credited with affecting policy nationwide, the federal court declared the City of New York's Policy of removing children from battered mothers to be unconstitutional, and enjoined its illegal practices.

Miller v. Gammie, (July 9, 2003) 335 F.3d 889 (9th Cir. 2003)

The Ninth Circuit en banc ruled that foster children who are placed in dangerous foster care placements can sue the agencies and staff who failed to protect them from harm. The Court overruled its 14-year-old precedent, which had given absolute immunity from liability to foster care organizations and staff.

DISCLOSURE OF AGENCY RECORDS RELEASE FORM

Pursuant to Alaska Statute 47.10.092. Disclosure to certain public officials and

employees, and notwithstanding AS 47.10.090 and 47.10.093, we, Parent's names, hereby

request that the Office of Children's Services disclose confidential or privileged information

about our child, child's name, to Rynnieva Moss, legislative aide to Representative Coghill. I

understand that this release allows Rynnieva Moss to discuss our case with Office of Children's

Services caseworkers and supervisors and gives her access to our file.

DATED this 13th day of December, 2004 in Fairbanks, Alaska.

	Name Address City, State Zip Code	
Witnessed by: (someone other than parents)		
Signature		

Printed Name

73

CINA LEGISLATION PENDING IN 24th LEGISLATURE

	PRIME	CURRENT	STATUS
BILL SHORT TITLE	SPONSOR(s)	STATUS	DATE
HB 14 DISCLOSURES BY FOSTER PARENTS	ROKEBERG	(H) HES	01/10/05
"An Act relating to disclosure of information about a child or a child's family to a legislate or a member of a legislator's staff; and making conforming changes."			
HB 17 CINA; ADOPTION; FOSTER CARE	ROKEBERG, GATTO	(H) HES	01/10/05
"An Act relating to children in need of aid; authorizing additional family members to consent to disclosure of confidential or privileged information about children and families involved with children's services within the Department of Health and Social Services to officials for review or use in official capacities; relating to reports of harm; and relating to adoptions and foster care."			
HB 53 CHILDREN IN NEED OF AID/REVIEW PANELS	COGHILL	(H) HES	01/10/05

"An Act relating to child-in-need-of-aid proceedings; amending the construction of statutes pertaining to children in need of aid; relating to a duty and standard of care for services to children and families; amending court hearing procedures to allow public attendance at child-in-need-of-aid proceedings; establishing a right to a trial by jury in termination of parental rights proceedings; reestablishing and relating to state and local citizens' review panels for certain child custody matters; amending the duty to disclose information pertaining to a child in need of aid; establishing a distribution age for permanent fund dividends held in trust for a child committed to the custody of the Department of Health and Social Services; mandating reporting of the medication of children in state custody; prescribing the rights of grandparents related to child-in-need-of-aid cases and establishing a grandparent priority for adoption in certain child-in-need-of-aid cases; modifying adoption and placement procedures in certain child-in-need-of-aid cases; amending treatment service requirements for parents involved in child-in-need-of-aid proceedings; amending Rules 3 and 18, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

[&]quot;An Act increasing the penalty for failure to report child abuse or neglect."

<u>HB 112</u>	CHILD PROTECTION INTERVIEW/TRANSPORT	RLS BY REQUEST OF THE GOVERNOR	(H) HES	01/26/05
	"An Act relating to child protection, including forensic interviews and transportation of children; and providing for an effective date."			
<u>HB 113</u>	CHILD PROTECTION CONFIDENTIALITY	RLS BY REQUEST OF THE GOVERNOR	(H) HES	01/26/05
	"An Act relating to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters; relating to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters; amending Rules 3 and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."			
<u>HB 114</u>	TERM. PARENTAL RTS/CINA/DELINQUENCY CASES	RLS BY REQUEST OF THE GOVERNOR	(H) STA	01/26/05
	"An Act relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding; relating to eligibility for permanent fund dividends for certain children in the custody of the state; relating to child in need of aid proceedings and juvenile delinquency proceedings; and providing for an effective date."			
<u>SB 47</u>	FAILURE TO REPORT CHILD ABUSE/NEGLECT	DYSON	(S) HES	01/12/05
	"An Act increasing the penalty for failure to report child abuse or neglect."			
<u>SB 82</u>	CHILD PROTECTION INTERVIEW/TRANSPORT	RLS BY REQUEST OF THE GOVERNOR	(S) HES	01/26/05
	"An Act relating to child protection, including forensic interviews and transportation of children; and providing for an effective date."			
<u>SB 83</u>	TERM. PARENTAL RTS/CINA/DELINQUENCY CASES	RLS BY REQUEST OF THE GOVERNOR	(S) HES	01/26/05
	"An Act relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding; relating to eligibility for permanent fund dividends for certain children in the custody of the state; relating to child in need of aid proceedings and juvenile delinquency proceedings; and providing for an effective date."			

"An Act relating to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters; relating to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters; amending Rules 3 and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

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Legislative Liaison Office of Children's Ser		465-3548 465-3397(fax)	P.O. Box 110603 Juneau, AK 99811-0603
			130 Seward St, Rm 406
Southeast Region Children's Services Mgr	Ritchie Sonner	465-3296 465-1669(fax)	3025 Clinton Drive #200 Juneau, AK 99801
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Northern Region Children's Services Mgr	Rayna Hamm	451-2650 451-2058(fax)	751 Old Richardson Hwy Suite 300 Fairbanks, AK 99701

¹⁴ The first step in helping constituents who are involved with OCS is to establish a good working relationship with OCS in your community. If you have not already done so, make an appointment with the Children Service's Manager in your region. Let that person know that you are primarily interested in due process for constituents and that you are fully cognizant of the fact that when a parent complains about an OCS issue you may not get all the facts from them and there are two sides to each story. Don't approach OCS with a pointed finger. Your are a go-between for the parent and your job is to make sure the family gets due process.

Children in Need of Aid (CINA) - ICWA Timeline and Burdens of Proof

48 hours Petition 24 hours **Emergency** Custody Timeline

Temporary Hearing Custody

Adjudication

120 Days

Hearing)

8 more months (12 months

from Temporary Custody

Disposition Hearing

(same time as adjudication or within reasonable time after) No party has burden of proof:

> (more likely than not) that

child is CINA

evidence

Preponderance

(1) what is in the child's parent or other appropriate best interests (state custody, up to 2 years; custody with person under supervision by

50% Proof

(2) have reasonable efforts been made to reunite since last funding.

state)

not as apply except decision maintain child in outtemporarily disposition temporary placement of-home pending standard (same under Does t 2

(1) **Probable cause** (fair probability or substantial chance) to believe (2) Temporary custody with (a) department (contrary to welfare to remain in parental custody) or (b) parent with temporary supervision by department;

harmed

physically

neglected sexually

abused,

abandoned.

Child

State Law

to extent necessary to protect life or get

medical attention.

(3) Reasoanble efforts to prevent removal.

Burden of Proof

physical damage or to prevent imminent Removal necessary

If removal from parent requested,

(1) is it more likely than not still necessary to prevent imminent harm or dammage to child; or

the child would likely suffer serious clear and convincing evidence, including qualified expert testimony, that physical or emotional damage if left with parent.

prevent breakup of family and have have active efforts been made to been unsuccessful

**Court placement preferences

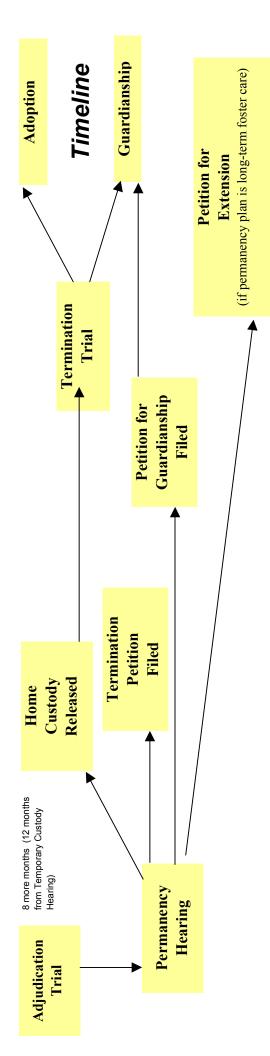
⊏\ Clear and convincing including qualified expert testimony, Oľ left that the child is likely to suffer serious physical emotional damage it evidence,

(see Temporary Custody) □ active efforts

with parent

80% Proof

custody)



 □ Clear and convincing evidence that the child is

Permanency plan for child:

reasonable efforts

clear and convincing changed or not changed soon enough for child's evidence parent has not needs

if child is to remain

out of home

□ reasonable efforts

preponderance of evidence: child continutes to be CINA extension of custody in best interest

> rights or

parent's

Û

law

suspended by circumstances

reasoanble efforts unless dispensed with by court

best interest of child

Û

Burden of Proof

or □ evidence beyond a reasoanble doubt that the child will likely suffer damage if left physical with parent emotional serious

> court should take into account ICWA placement

preferences.

prevent

Active efforts to

breakup of family

preponderance of evidence: active efforts (see Temporary Custody) Û

reasonable that the child is terminated, suffer serious parent's rights not or emotional damage if left with parent beyond physically likely to if previously evidence

preponderance of evidence: active efforts (see Temporary Custody)

clear and convincing evidence or to suffer serious physical emotional damage if left with parent likely

preponderance of evidence: active efforts (see Temporary Custody)

83